

Vol. 44—No. 54
3-19-79
BOOK 1:
PAGES
16355-16542

BOOK 2:
PAGES
16543-16877

BOOK 1 OF 2 BOOKS MONDAY, MARCH 19, 1979



highlights

NATIONAL FARM SAFETY WEEK

Presidential proclamation 16355

ENERGY CONSERVATION

DOE proposes rules implementing the Residential Conservation Service Program; comments by 5-25-79; April-May hearings (Part II of this issue) 16546

ENERGY: OVERCHARGE REFUNDS

DOE proposes procedures for distribution of refunds from Gulf Oil Co.; comments by 4-15-79 16424, 16475

OIL AND GAS

Commerce/NOAA proposes procedures for awarding Outer Continental Shelf (OCS) State Participation Grants; comments by 5-3-79 (Part V of this issue) 16852

OUTER CONTINENTAL SHELF

DOT/CG issues rules implementing legislation which establishes an Offshore Oil Pollution Compensation Fund; effective 3-17-79 (Part VII of this issue) 16860

COAL MANAGEMENT

Interior/BLM proposes procedures to manage Federal coal through leasing or exchange; comments by 5-18-79 (Part III of this issue) 16800

MOTOR GASOLINE

DOE/ERA issues guidelines to activation order updating the allocation base period 16480

URANIUM

NRC extends the interim fuel cycle rule; extension until 4-30-79 16360

MOTOR VEHICLES

DOT/NHTSA requests comments on a petition to limit speed capacity of certain commercial vehicles to 57 mph; applications for assistance by 4-18-79; comments by 8-17-79 16461
EPA issues a technical amendment to the exhaust sample analysis requirement; effective 3-19-79 16993

MEDICARE AND MEDICAID

HEW/HCFR issues conforming regulations with Professional Standards Review Organization Regulations; effective 2-22-78; comments by 4-18-79 16394

FINANCIAL RECORDS

Justice publishes forms to be presented to financial institutions under Right to Financial Privacy Act of 1978 16500

FINANCIAL ASSISTANCE

HEW proposes to permit debarment and suspension from eligibility; comments by 5-18-79 16444

SUMMER YOUTH RECREATION PROGRAM

CSA proposes a rule describing the fiscal year 1979 program requirements; comments by 4-18-79 16455

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE:** As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

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Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)..	523-3419
	523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents.....	523-5235
Index.....	523-5235

PUBLIC LAWS:

Public Law numbers and dates.....	523-5266
	523-5282
Slip Law orders (GPO)	275-3030
U.S. Statutes at Large.....	523-5266
	523-5282
Index.....	523-5266
	523-5282

U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

AFDC, MEDICAID, AND SOCIAL SERVICE PROGRAMS

HEW proposes to revise and recodify its regulations on applications, eligibility determinations, assistance payments, and fair hearings..... 16449

LOW-INCOME HOUSING

HUD issues rules permitting public housing agency management of Section 8 Existing Housing Projects; effective 4-18-79 (Part IV of this issue)..... 16848

SOCIAL SERVICES

HEW/HDS issues regulations on child care services and services for drug and alcohol abusers; effective 10-1-78; comments by 4-18-79..... 16398

NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

HEW/PHS designates health professions for 1979-80 school year 16499 |

COMMUTER RAIL SERVICE

ICC issues a report on and revises its standards for determining continuation subsidies 16402 |

NATIONAL GUARD

DOD/Army revises its regulations concerning medical care for members; effective 3-12-79 16385 |

PUBLIC UTILITIES

DOE/FERC issues changes in filing of the rate schedules; effective 1-2-79..... 16371

AVIATION

DOT/FAA proposes investigation and enforcement procedures; comments by 5-24-79 16424 |

AIRCRAFT TIRES

DOT/FAA proposes rules updating the minimum performance standards for all aircraft main landing gear and nose wheel tires; comments by 4-18-79 16430 |

AIRCRAFT

DOT/FAA invites proposals on and postpones the Review Conference on light transport airplane airworthiness; proposals by 7-9-79; conference postponed until 9-79 (Part VI of this issue) 16856 |

DISASTER LOANS

SBA formalizes procedures for requesting disaster declarations and time limit for requests; effective 3-19-79 16361 |

CROP INSURANCE

USDA/FCIC raises authority of Manager to handle good faith reliance on misrepresentation cases; effective 3-19-79..... 16359

AMATEUR RADIO SERVICE

FCC terminates proceedings concerning operator classes, privileges, and requirements 16460 |

RADIO STATIONS

FCC clarifies requirements for assignment of an additional working frequency to a Class III-B Public Coast station; effective 3-26-79 16401 |

HIGHLIGHTS—Continued

BROADCAST REMOTE PICKUP STATIONS

FCC amends rules concerning filing of applications, effective 3-26-79 16401

AGENCY FORMS

OMB lists forms under review 16513

INFORMATION PROCESSING

Commerce/NBS announces exclusion criteria for Federal I/O Channel Level Interface Standards and procedures for maintaining exclusion list 16466

IMPORTS

Office of the Special Representative for Trade Negotiations solicits comments on reallocation of speciality steel quotas; comments by 3-29-79 16515

SECURITIES

SEC issues interpretive releases on disclosure of management remuneration, effective 2-22-79 16368

BANKING

FRS amends regulations on maximum rates of interest payable on time deposits of \$10,000 or more; effective 3-15-79.. 16360

MEETINGS—

CRC: Florida Advisory Committee, 3-22-79 16466
 North Dakota Advisory Committee, 4-12-79 16466
 Washington Advisory Committee, 4-7-79 16466
 Defense/Secy: Defense Science Board Task Force on High Energy Lasers, 4-6 and 4-7-79 16469
 Defense Science Board Task Force on V/STOL Aircraft, Phase II, 4-10-79 16470
 Defense Systems Management College Board of Visitors, 5-7-79 16470
 DOE: Oil Supply, Demand, and Logistics Task Group of the Committee on Refinery Flexibility, 3-30-79 16472
 DOT/FAA: Air Traffic Procedures Advisory Committee, 4-9 through 4-12-79 16526
 FCC/Radio Technical Commission for Marine Services, Special Committees No. 74 and 71, 4-4 and 4-5-79 16489
 FHLBB: Federal Savings and Loan Advisory Council, 4-30, 5-1, and 5-2-79 16491
 HEW/NIH: Clinical Applications and Prevention Advisory Committee, 4-26 and 4-27-79 16497
 General Research Support Review Committee, 4-2 through 4-4-79 16498

National Cancer Institute, advisory committees, April meetings 16499
 Interior/BLM: Socorro District Grazing Advisory Board, 4-18-79 16499
 National Commission for Manpower Policy, 4-6-79 16502
 National Commission on Unemployment Compensation, 3-29 through 3-31-79 16502
 NFAH: Humanities Panel Advisory Committee, April meetings 16503
 NRC: ACRS Subcommittee on Combination of Dynamic Loads, 4-3-79 16512
 NSF: Advisory Committee for Astronomy, 4-5 and 4-6-79.. 16503
 Subcommittee on Ecological Sciences, 4-19 and 4-20-79 16503
 Subcommittee on Law and Social Sciences, 4-5 and 4-6-79 16503
 Task Group No. 6 of the NSF Advisory Council, 4-5-79 .. 16504
 SBA: Region III Advisory Council, 4-5 and 4-11-79 (2 documents) 16525, 16526
 Region V Advisory Council Meeting, 4-12-79 16525
 Region VIII Advisory Council Executive Board, 4-11-79 ... 16526
 State: Fine Arts Committee, 5-24-79 16526
 USDA: Grain Standards Act Advisory Committee, 3-27-79.. 16464

CANCELLED MEETINGS—

HEW/NIH: Cancer Control Grant Review Committee, 3-29 and 3-30-79 16497
 Cancer Control Intervention Programs Review Committee, 3-29 and 3-30-79 16497

SUNSHINE ACT MEETINGS 16537

HEARINGS—

DOT/FRA administrative hearing on emergency order limiting movement of hazardous materials, 3-19-79 16526
 HEW/NIH: National Diabetes Advisory Board, 5-9-79, 6-20-79, and 7-11-79 16498

SEPARATE PARTS OF THIS ISSUE

Part II, DOE 16546
 Part III, Interior/BLM 16800
 Part IV, HUD 16848
 Part V, Commerce/NOAA 16852
 Part VI, DOT/FAA 16856
 Part VII, DOT/CG 16860

contents

THE PRESIDENT

Proclamations	
Farm Safety Week, National (Proc. 4645)	16355

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE

Notices	
Stockyards; posting and depositing:	
Pedley Horse Sales, Calif., et al	16464

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Soil Conservation Service.	
Rules	
Authority delegations by Secretary and General Officers: International Affairs and Commodity Programs, Under Secretary, et al	16357

ARMY DEPARTMENT

Rules	
National Guard, medical care; simplification of regulations...	16385

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Notices	
Meetings:	
Humanities Panel	16503

CIVIL AERONAUTICS BOARD

Notices	
Hearings, etc.:	
Air Midwest, Inc.	16465
Northern Tier show cause proceeding	16465
Meetings; Sunshine Act (3 documents)	16537, 16538

CIVIL RIGHTS COMMISSION

Notices	
Meetings; State Advisory committees:	
Florida	16466
North Dakota	16466
Washington	16466

COAST GUARD

Rules	
Oil pollution liability and compensation:	
Offshore oil pollution compensation fund	16860

COMMERCE DEPARTMENT

See also National Bureau of Standards; National Oceanic and Atmospheric Administration.

Notices	
Advisory committee review; inquiry	16467

COMMODITY FUTURES TRADING COMMISSION

Proposed Rules	
Registration fees to be non-refundable upon denial or withdrawal of application	16443

Notices	
Futures contracts, proposed; availability:	
Chicago Mercantile Exchange; correction	16469
Meetings; Sunshine Act	16538

COMMUNITY SERVICES ADMINISTRATION

Proposed Rules	
Summer youth recreation programs; 1979 FY	16455

CUSTOMS SERVICE

Notices	
Customhouse broker license cancellations:	
Cota, Ernest B	16534

DEFENSE DEPARTMENT

See also Army Department.	
Notices	
Meetings:	
Defense Systems Management College Board of Visitors	16470
Science Board task forces (2 documents)	16469, 16470

ECONOMIC REGULATORY ADMINISTRATION

Notices	
Motor gasoline allocation base period; activation order guidelines	16480

ENERGY DEPARTMENT

See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.	
Proposed Rules	
Residential conservation service program	16546
Notices	
Meetings:	
National Petroleum Council ...	16472

Patent license, intent to grant:	
Variable orifice using an iris shutter	16473
Power rate adjustments:	
Alaska Power Administration; Snettisham Project; interim rate extension	16470

ENVIRONMENTAL PROTECTION AGENCY

Rules	
Air pollution control; new motor vehicles and engines:	
Technical amendments; correction	16393
Air quality control regions; criteria and control techniques:	
Attainment status designations	16388
Air quality implementation plans; approval and promulgation; various States, etc.:	
New Jersey	16386

Notices	
Environmental statements; availability, etc.:	
Agency statements, weekly receipts	16485

FEDERAL AVIATION ADMINISTRATION

Rules	
Airworthiness directives:	
Boeing	16362
Gulfstream American Corp	16363
Mooney Aircraft Corp	16364
Restricted areas; correction	16366
Transition areas (3 documents)	16364, 16365

Proposed Rules	
Airworthiness standards:	
Aircraft tires; technical standard order authorizations	16430
Transport airplane, light; airworthiness review; postponement of Review Commission	16856
Investigation and enforcement procedures; complaint filing procedures, fact finding investigations, etc	16424
Transition areas (2 documents)	16438-16440
VOR Federal airways (3 documents)	16438-16440

Notices	
Meeting:	
Air Traffic Procedures Advisory Committee	16526

FEDERAL COMMUNICATIONS COMMISSION

Rules	
Radio broadcasting:	
Experimental, etc.; filing of broadcast remote pickup station applications	16401

CONTENTS

Radio services, special:	
Maritime services and Alaska-	
public fixed stations; assign-	
ment of working frequencies	16401
to Public Coast station	
Maritime services and Alaska-	
public fixed stations; single	
sideband A3J (suppressed	
carrier) on the maritime mo-	
bile service radiotelephone	
frequency 2182 kHz; correc-	
tion	16402
Proposed Rules	
Radio services; special:	
Amateur radio services; opera-	
tor classes, privileges, and	
requirements; proceeding	
terminated	16460
Television stations; table of as-	
signments:	
Georgia	16459
Notices	
Meetings:	
Marine Services Radio Tech-	
nical Commission	16489
Meetings; Sunshine Act	16538
Standard broadcast stations; no-	
tification list	16489
FEDERAL CROP INSURANCE	
CORPORATION	
Rules	
Crop insurance; 1969 and suc-	
ceeding crop years; good faith	
reliance on misrepresentation;	
relief	16359
FEDERAL DEPOSIT INSURANCE	
CORPORATION	
Notices	
Meetings; Sunshine Act (2 docu-	
ments)	16538, 16539
FEDERAL ELECTION COMMISSION	
Notices	
Meetings; Sunshine Act (2 docu-	
ments)	16540
FEDERAL ENERGY REGULATORY	
COMMISSION	
Rules	
Rate schedules; filing	16371
Notices	
Hearings, etc.:	
Pacific Power & Light Co. et	
al	16474
Public Service Co. of Indiana,	
Inc	16474
Ohio Power Co	16473
Meetings; Sunshine Act (2 docu-	
ments)	16540
FEDERAL GRAIN INSPECTION SERVICE	
Notices	
Meetings:	
Grain Standards Act Advisory	
Committee	16464

FEDERAL HOME LOAN BANK BOARD	
Notices	
Meetings:	
Federal Savings and Loan Ad-	
visory Council	16491
Meetings; Sunshine Act	16541
FEDERAL INSURANCE ADMINISTRATION	
Rules	
Flood insurance; communities	
eligible for sale:	
California et al	16375
Flood insurance; special hazard-	
ous areas, map corrections:	
Alabama	16376
Florida	16377
Massachusetts (4 docu-	
ments)	16377-16379
Missouri	16379
New Jersey (2 documents)	16380
Oklahoma (3 documents)	16381,
	16382
Rhode Island	16382
Texas (3 documents)	16383, 16384
Proposed Rules	
Flood elevation determinations:	
Massachusetts; correction	16444
FEDERAL MARITIME COMMISSION	
Notices	
Agreements filed, etc	16491
Complaints filed:	
Westinghouse Electric Corp.	
v. Sea-Land Service, Inc.	16492
Freight forwarder licenses:	
Brown, E. Allen	16492
FEDERAL RAILROAD ADMINISTRATION	
Notices	
Hazardous materials; emergen-	
cy order limiting movement:	
Louisville and Nashville Rail-	
road Co.; hearing	16526
FEDERAL RESERVE SYSTEM	
Rules	
Interest on deposits (Regulation	
Q):	
Maximum rates of interest	
payable	16360
Notices	
Applications, etc.:	
Chemical New York Corp.	16493
First Financial Bancshares,	
Inc	16494
Hawkeye Bancorporation, Inc	
16494	
Kent Bancshares, Inc.	16494
Kerndt Bank Services, Inc.	16494
Lipscomb Bancshares, Inc.	16495
Mazepa Bancshares, Inc.	16495
Mesquite Bancshares, Inc.	16495
Michigan National Corp.	16495
National Detroit Corp.	16495
Old Kent Financial Corp.	16496
Rockford City Bancorp., Inc. ...	16496
Meetings; Sunshine Act	16541

FEDERAL TRADE COMMISSION	
Rules	
Procedures and practice rules:	
Trade regulation rulemaking	
procedures; ex parte com-	
munications; interim	16366
Proposed Rules	
Consent orders:	
Inland Empire Roofing Con-	
tractors Association	16441
GENERAL SERVICES ADMINISTRATION	
Rules	
Property management, Federal:	
Space assignment; appeals	
procedure	16394
HEALTH CARE FINANCING	
ADMINISTRATION	
Rules	
Professional standards review:	
Medicare and Medicaid pro-	
grams; review responsibility,	
certification, and payment	
activities	16394
Proposed Rules	
Medical assistance programs	
(Medicaid):	
Applications, eligibility deter-	
minations, assistance pay-	
ments and fair hearings;	
cross reference	16449
HEALTH, EDUCATION, AND WELFARE	
DEPARTMENT	
See also Health Care Financing	
Administration; Health Re-	
sources Administration; Hu-	
man Development Services	
Office; National Institutes of	
Health; Public Health Ser-	
vices; Social Security Adminis-	
tration.	
Proposed Rules	
Cash assistance, medical assist-	
ance and social service pro-	
grams:	
Applications, eligibility deter-	
minations, assistance pay-	
ments, and fair hearings	16449
Financial assistance; debarment	
and suspension from eligibil-	
ity	16444
HEALTH RESOURCES ADMINISTRATION	
Notices	
Grants availability:	
Pharmacy, nursing, podiatry,	
optometry, and veterinary	
medicine students	16499
HEARINGS AND APPEALS OFFICE,	
ENERGY DEPARTMENT	
Proposed Rules	
Oil; consent orders:	
Gulf Oil Corp.; special refund	
procedures; cross reference ..	16424

CONTENTS

Notices

Applications for exception:

- Decisions and orders; correction 16474
- Objections filed 16474

Oil; consent orders:

- Gulf Oil Corp.; special refund procedures 16475

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Federal Insurance Administration.

Rules

Low-income housing:

- Housing assistance payments; existing housing (Section 8).. 16848

HUMAN DEVELOPMENT SERVICES OFFICE

Rules

Social services programs:

- Child day care services and services for drug and alcohol abusers; inquiry 16398

Proposed Rules

Social services programs:

- Applications, eligibility determinations, assistance payments and fair hearings; cross reference 16449

INTERIOR DEPARTMENT

See Land Management Bureau; Surface Mining Reclamation and Enforcement Office.

INTERNATIONAL COMMUNICATION AGENCY

Rules

Organization, functions, and authority delegations:

- Reorganization Plan No. 2 of 1977; organizational changes 16372

Notices

- Culturally significant works of art; determination 16500

INTERSTATE COMMERCE COMMISSION

Rules

Practice rules:

- Commuter rail service continuation subsidies determination standards 16402

Notices

- Hearing assignments 16535
- Motor carriers:
 - Transfer proceedings 16535
- Railroad operation, acquisition, construction, etc.:
 - Western Pacific Railroad Co. et al. (2 documents) 16535, 16536

JUSTICE DEPARTMENT

Notices

- Financial Privacy Act; forms presented to financial institutions 16500

LAND MANAGEMENT BUREAU

Proposed Rules

- Coal management program 16800

Notices

Meetings:

- Socorro District Grazing Advisory Board 16499

LEGAL SERVICES CORPORATION

Notices

- Meetings; Sunshine Act 16541

MANAGEMENT AND BUDGET OFFICE

Notices

- Agency forms under review 16513

MANPOWER POLICY, NATIONAL COMMISSION

Notices

- Meetings 16502

MATERIALS TRANSPORTATION BUREAU

Notices

Hazardous materials:

- Applications; exemptions, renewals, etc. (4 documents) ... 16526-16532

NATIONAL BUREAU OF STANDARDS

Notices

- Information processing standard, Federal:
 - I/O channel level interface; exclusion criteria 16466

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Proposed Rules

Motor vehicle safety standards:

- Speed capability of commercial vehicles in interstate commerce 16461

Notices

- Motor vehicle defect proceedings, petitions, etc.:
 - Keto, Jorma; Jeep clutch cables 16534
- Motor vehicle safety standards; exemption petitions, etc.:
 - Flxible Co.; air brake systems.. 16533
 - Ford Motor Co.; brake hoses .. 16534

NATIONAL INSTITUTES OF HEALTH

Notices

Meetings:

- Cancer Control Grant Review Committee 16497
- Cancer Control Intervention Programs Review Committee 16497
- Cancer Institute, National; advisory committees 16499
- Clinical Applications and Prevention Advisory Committee 16497
- Diabetes National Advisory Board 16498
- General Research Support Review Committee 16498

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Proposed Rules

- Coastal energy impact program: OCS State participation grants 16852

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:

- Advisory Council 16504
- Astronomy Advisory Committee 16503
- Environmental Biology Advisory Committee 16503
- Social Sciences Advisory Committee 16503

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

- Meetings; Sunshine Act 16542

NUCLEAR REGULATORY COMMISSION

Rules

- Environmental protection; licensing and regulatory policy and procedures:
 - Uranium fuel cycle; extension of effective period 16360

Notices

Applications, etc.:

- Commonwealth Edison Co. 16504
- Commonwealth Edison Co. et al 16504
- Duquesne Light Co. et al 16505
- Maine Yankee Atomic Power Co 16506
- Nebraska Public Power District 16507
- Northern States Power Co. 16507
- Nuclear Engineering Co. Inc... 16508
- Offshore Power Systems 16508
- Oregon State University 16508
- Portland General Electric Co. et al 16509
- Power Authority of State of New York (2 documents)..... 16509, 16510
- Virginia Electric & Power Co. (2 documents)..... 16511, 16512
- Environmental statements; availability, etc.:
 - Oregon State University; research reactor 16509
- International Atomic Energy Agency codes of practice and safety guides; availability of drafts 16506
- Meetings:
 - Reactor Safeguards Advisory Committee 16512
- Regulatory guides; issuance and availability 16511

OVERSEAS PRIVATE INVESTMENT CORPORATION

Notices

- Meetings; Sunshine Act 16542

CONTENTS

PUBLIC HEALTH SERVICE

Notices

Health maintenance organiza-
tions, qualified; list 16496

SECURITIES AND EXCHANGE COMMISSION

Rules

Interpretative releases:

Management remuneration
disclosure 16368

Notices

Committees; establishment, re-
newals, terminations, etc.:

National Market Advisory
Board 16525

Hearings, etc.:

American Electric Power Co.,
Inc 16516

Appalachian Power Co 16516

Fidelity Cash Reserves 16517

General Public Utilities
Corp 16517

Granite State Electric Co. et
al 16519

Lowell Gas Co. et al 16520

Middle South Utilities, Inc 16522

Ohio Edison Co. et al 16523

Southwestern Electric Power
Co. et al 16524

SMALL BUSINESS ADMINISTRATION

Rules

Disaster loans:

Disaster declaration request
procedures and time limits .. 16361

Notices

Disaster areas:

Oregon 16525

Meetings; advisory councils:

Clarksburg 16525

Columbus 16525

Denver 16526

Washington, D.C. 16526

SOCIAL SECURITY ADMINISTRATION

Proposed Rules

Financial assistance programs:

Aid to families with depend-
ent children; applications,
eligibility determinations,
assistance payments and
fair hearings; cross refer-
ence 16449

SOIL CONSERVATION SERVICE

Notices

Environmental statements;
availability, etc.:

Hoffa Creek Watershed,
Miss 16464

STATE DEPARTMENT

Notices

Meetings:

Fine Arts Committee 16526

SURFACE MINING RECLAMATION AND ENFORCEMENT OFFICE

Notices

Coal mining and reclamation
plans:

Consolidation Coal Co 16500

TENNESSEE VALLEY AUTHORITY

Notices

Meetings; Sunshine Act 16542

TRADE NEGOTIATIONS, OFFICE OF SPECIAL REPRESENTATIVE

Notice

Import quotas:

Specialty steel; inquiry 16515

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Avi-
ation Administration; Federal
Railroad Administration; Ma-
terials Transportation Bu-
reau; National Highway Traf-
fic Safety Administration.

TREASURY DEPARTMENT

See Customs Service.

UNEMPLOYMENT COMPENSATION, NATIONAL COMMISSION

Notices

Meetings 16502

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list, has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOT/MTB—Hazardous materials table and
communications regulations; label and plac-
ard colors 9756; 2-15-79

[Corrected at 44 FR 10984, 2-26-79]

FCC—De Kalb, Ill., television broadcast station;
changes made in table of assign-
ments 7960; 2-8-79

List of Public Laws

NOTE: No public laws have been received
by the Office of the Federal Register for
assignment of law numbers and inclusion in
today's listing.

[Last Listing March 9, 1979]

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month. A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR		17 CFR		43 CFR	
PROCLAMATIONS:		231	16368	PROPOSED RULES:	
4645	16355	241	16368	3400	16809
7 CFR		271	16368	3410	16813
2	16357	PROPOSED RULES:		3420	16816
401	16359	1	16443	3430	16827
10 CFR		18 CFR		3440	16832
51	16360	35	16371	3450	16832
PROPOSED RULES:		22 CFR		3460	16834
205	16424	502	16372	3470	16840
456	16546	504	16373		
12 CFR		505	16374	45 CFR	
217	16360	511	16374	228	16398
13 CFR		24 CFR		PROPOSED RULES:	
123	16361	882	16848	76	16444
14 CFR		1914	16374	205	16449
39 (3 documents)	16362-16364	1920 (16 documents)	16376-16384	206	16449
71 (3 documents)	16364, 16365	PROPOSED RULES:		228	16449
73	16366	1917	16444	234	16449
PROPOSED RULES:		32 CFR		1061	16455
13	16424	564	16385		
23	16856	33 CFR		47 CFR	
25 (2 documents)	16433, 16856	135	16868	1	16401
37	16434	136	16873	74	16401
71 (5 documents)	16438-16440	40 CFR		81	16401
135	15856	52	16386	83	16402
15 CFR		81	16388	PROPOSED RULES:	
PROPOSED RULES:		86	16393	73	16459
931	16852	41 CFR		97	16460
16 CFR		101-17	16394	49 CFR	
1	16366	42 CFR		1127	16402
PROPOSED RULES:		405	16396	PROPOSED RULES:	
13	16441	431	16398	571	16461
		463	16398		

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

1 CFR		7 CFR—Continued		12 CFR—Continued	
Ch. I.....	11517	PROPOSED RULES—Continued		250.....	12968
475.....	12155	1102.....	14593, 14604	261b.....	11750
PROPOSED RULES		1104.....	14595, 14604	329.....	15476
Ch. III.....	12198, 14562	1106.....	14596, 14605	523.....	15647
3 CFR		1108.....	14597, 14605	526.....	15478
ADMINISTRATIVE ORDERS:		1120.....	14599, 14606	545.....	15479
Presidential Determinations:		1126.....	14589, 14603	563.....	15647
No. 79-4 of January 31, 1979...	12151	1132.....	14600, 14606	701.....	12401, 15479
No. 79-5 of February 6, 1979...	12153	1133.....	16019	PROPOSED RULES:	
No. 73-10 of January 2, 1973		1138.....	14602, 14607	Ch. I.....	15728
(Amended by Presidential		1402.....	11555	215.....	13035
Determination No. 79-5 of		1438.....	12199	304.....	13035
Feb. 6, 1979).....	12153	1701.....	14607	349.....	13035
EXECUTIVE ORDERS:		1948.....	12936	575.....	15507
11888 (Amended by EO 12124) ..	11729	2900.....	12428	576.....	15507
12124.....	11729	8 CFR		577.....	15508
6002 (Revoked by PLO 5658)	14559	235.....	12157	578.....	15511
PROCLAMATIONS:		238.....	12399	701.....	11785
4643.....	12601	242.....	15996	720.....	12431
4644.....	12603	287.....	15996	740.....	15512
4645.....	16355	PROPOSED RULES:		745.....	15512
5 CFR		100.....	14562	13 CFR	
Ch. I.....	14533	242.....	12199	120.....	11750
300.....	11996	9 CFR		123.....	16361
451.....	15987	78.....	15997	309.....	16003
536.....	11741	82.....	11748, 12159, 12957, 15997,	PROPOSED RULES:	
7 CFR		85.....	12159	Ch. V.....	12562
2.....	16357	92.....	12958	108.....	11787
25.....	12156	10 CFR		121.....	12200, 15513
25a.....	12156	9.....	15998	14 CFR	
401.....	16359	35.....	11749	21.....	15648
725.....	15989	51.....	16360	39.....	11527,
726.....	15991	205.....	12160		11528, 12019-12024, 12635-12637,
795.....	14533	210.....	12634		15650, 16362-16364
905.....	12605	211.....	12959	71.....	11530-
907.....	11745, 12606, 14533,	212.....	12399, 12634, 14534, 15600		11534, 12026, 12639, 15651-15653,
910.....	11746, 12953,	570.....	15568		16364, 16365
916.....	12156	580.....	15471, 15642	73.....	11532, 11535, 12640, 16366
917.....	12156	600.....	12920	91.....	15654
928.....	12606	1022.....	12594	95.....	15656
929.....	12017	PROPOSED RULES:		97.....	11536, 12640, 15657
959.....	11746	2.....	12428	296.....	14536
971.....	11517	205.....	16424	380.....	12971
1421.....	15465	211.....	12431	385.....	15657
1464.....	15993	212.....	12431	PROPOSED RULES:	
1900.....	15641	450.....	13554	1.....	12042
1955.....	15994	455.....	13554	13.....	16424
1980.....	12607, 15995	456.....	16546	21.....	12042, 12044, 12045
2853.....	12953	475.....	12685	23.....	16856
2880.....	12954	500.....	12227	25.....	16433, 16856
2900.....	11518	501.....	12227	27.....	12685
PROPOSED RULES:		502.....	12227	29.....	12685
800.....	11923	503.....	12227	37.....	16434
802.....	11982	505.....	12227	39.....	12687
803.....	11984	12 CFR		43.....	12685
929.....	11785	215.....	12959	61.....	12685
1062.....	13033	217.....	16360	65.....	12042
1068.....	16019	219.....	12968	71.....	11555-
1073.....	14591, 14604	225.....	12019		11558, 12042, 12688, 12689,
1097.....	14592, 14604	226.....	11749, 12970, 15474		15730, 15731, 16438-16440

FEDERAL REGISTER

14 CFR—Continued

PROPOSED RULES—Continued

105	12042
121	12685, 15732
127	12685
129	15732
133	12685
135	12685, 16856
385	15733
1214	16020

15 CFR

7a	12982
7b	12982
8	12642
370	12405
373	12406, 12642
379	12405
385	12405
399	12405

PROPOSED RULES:

Ch. I	12562
Ch. II	12562
Ch. III	12562
Ch. IV	12562
Ch. VIII	12562
Ch. IX	12562
Ch. XII	12562
501	12690
931	16852
2301	13262

16 CFR

1	16366
13	15660
23	16004
24	16004
1700	12990

PROPOSED RULES:

13	11560, 13493, 16021, 16441
436	11565
440	15518
1208	13040
1209	12864, 12872

17 CFR

1	13439
12	12027
140	13458
145	13458
147	13458
211	12163
230	15610
231	16368
240	11751
241	11537, 16368
250	11541
256	11541
271	16368

PROPOSED RULES:

Ch. I	13494
1	16443
210	12201
270	12202, 12204

18 CFR

35	16371
154	13460
280	12409
281	12409, 13464

18 CFR—Continued

282	12409
283	12409
284	12409
285	12409
286	12409, 13473
708	14537
803	13473

PROPOSED RULES:

4	12432
16	12432
131	12432
290	12438, 14562

19 CFR

6	12028
101	12029
141	12411
153	12417

20 CFR

404	12418, 13473
410	12164
416	12578, 12579, 15661, 15663
653	13244
680	12394
901	11751

PROPOSED RULES:

404	12205
680	13188

21 CFR

7	12164
16	13234
73	16004
81	12169, 16004
101	16005
103	12169
105	16006
108	16204
113	16209
114	16230
129	12173
131	11752
184	12991
193	13473
201	16006
310	11753, 14540
448	16006
514	16007
520	12991, 12992, 16009, 16010
522	11754, 12992, 16010, 16011
524	16012
558	16012
561	12030, 13473
610	11754
620	14541
800	13234
1308	15480
1310	12993

PROPOSED RULES:

81	12205
207	12208
210	12208
225	12208
226	12208
333	13041
345	16126
436	11788
455	11789

21 CFR—Continued

PROPOSED RULES—Continued

501	12208
510	12208
514	12208
522	12208
555	11789
558	12208
870	13284

22 CFR

502	16372
504	16373
505	16374
511	16374

PROPOSED RULES:

17	12457
22	12209

23 CFR

630	11541, 11754
650	15665
655	11543, 12646
661	11542
771	12995
924	11543

PROPOSED RULES:

645	12209
658	15638

24 CFR

300	11755
811	12358
882	16848
1914	12175-12179, 13475, 16374
1915	12995, 13477
1917	11755-11758, 12180-12190, 12427, 12646-12668, 12996-13006, 15666-15697
1920	16376-16384
1931	12668

PROPOSED RULES:

880	11566
881	11566
882	15733
883	11566
1917	13501-13527, 14563, 14564, 14566-14576, 16444

25 CFR

221	12191, 12192
700	13007

PROPOSED RULES:

55	12210
120a	12458
273	13042

26 CFR

1	12418, 14548, 16013
31	14552, 15484

PROPOSED RULES:

1	11789, 12459
20	11791, 12459
25	11791
26	13043
31	12213

FEDERAL REGISTER

27 CFR

170.....	15697
PROPOSED RULES:	
4.....	14577
5.....	14577
7.....	14577
47.....	11795
178.....	11795
179.....	11795

28 CFR

20.....	12031
47.....	14553
50.....	11996
301.....	11759, 13008

PROPOSED RULES:

Ch. I.....	11804
2.....	12692

29 CFR

1404.....	13008
1601.....	15701
1604.....	13278
1607.....	11996
1910.....	14554
1952.....	11760, 13013
2510.....	11761

PROPOSED RULES:

Ch. XII.....	14577
1601.....	15733

30 CFR

Ch. VII.....	17795, 14902, 15485
--------------	---------------------

PROPOSED RULES:

211.....	12046, 12052, 12058
250.....	13527

31 CFR

51.....	11996
103.....	13478
500.....	11764
515.....	11768
520.....	11771

PROPOSED RULES:

1.....	15734
--------	-------

32 CFR

159.....	12669, 16013
246.....	11774
564.....	16385
575.....	11781

PROPOSED RULES:

988.....	12064
----------	-------

32A CFR

PROPOSED RULES:

Ch. VI.....	12562
-------------	-------

33 CFR

117.....	12031, 12670, 13478, 15702
135.....	16868
136.....	16873
165.....	11546, 15702, 15703
207.....	12192

PROPOSED RULES:

117.....	11566, 13543
126.....	12693
157.....	11567
401.....	12065

36 CFR

313.....	12671
322.....	12671
327.....	12672
1228.....	15486

PROPOSED RULES:

7.....	16021
--------	-------

37 CFR

PROPOSED RULES:

Ch. I.....	12562
2.....	16022

38 CFR

21.....	15491
36.....	16014

PROPOSED RULES:

3.....	12694, 13544
--------	--------------

39 CFR

955.....	13013, 16015
----------	--------------

PROPOSED RULES:

111.....	15514
----------	-------

40 CFR

52.....	12420-12422, 13478-13480, 14555, 15703, 15704, 16386
60.....	13480
65.....	12192, 12423, 13015-13081, 13481-13489, 14558, 15493, 15705-15710, 15712, 15713

81.....	16388
86.....	16393
162.....	13019
180.....	13490
440.....	11546

PROPOSED RULES:

51.....	15735
52.....	11798, 12459, 13545, 15735, 15738, 15741, 16024
56.....	13043
60.....	15742
65.....	12461, 12463, 13546
81.....	15743
86.....	11802, 15517
117.....	15744
180.....	13547
231.....	14578
250.....	13548
1517.....	16024

41 CFR

Ch. 101.....	12031, 13024
60-3.....	11996
101-11.....	15715
101-17.....	16394

42 CFR

52.....	13025
91.....	12034
405.....	16396
431.....	12578, 12585, 15494, 16398
463.....	16398

PROPOSED RULES:

59.....	13549
405.....	15744, 15745
473.....	12067

43 CFR

3200.....	12037
3220.....	12037

PROPOSED RULES:

4.....	11803
3400.....	16809
3410.....	16813
3420.....	16816
3430.....	16827
3440.....	16832
3450.....	16832
3460.....	16834
3470.....	16840
3500.....	12464

PUBLIC LAND ORDERS:

5658.....	14559
5659.....	15720

45 CFR

25.....	13028
205.....	12578, 12579
228.....	16398
233.....	12424

PROPOSED RULES:

Ch. XX.....	12562
76.....	16444
87.....	14582
119.....	11567
120.....	11567
134.....	11567
161h.....	13048
166.....	11567
205.....	16449
206.....	16449
228.....	16449
233.....	12214
234.....	11803, 16449
670.....	12214
1061.....	12708, 16445

46 CFR

31.....	13491
50.....	13492
71.....	13491
91.....	13491
176.....	13492
189.....	13492
502.....	14560
530.....	12194
531.....	11547
536.....	11547

PROPOSED RULES:

Ch. II.....	12562
30.....	12717
32.....	12717
34.....	12717
160.....	15923
401.....	15984
502.....	14582, 15517
503.....	15517

47 CFR

0.....	12424
1.....	12425, 16401
2.....	12679
74.....	16401
81.....	12194, 16401
83.....	16402
97.....	12679, 12681, 16015

FEDERAL REGISTER

47 CFR—Continued

PROPOSED RULES:

Ch. I	12466
31	13051
33	13051
42	13051
43	13051
73	11568, 15519, 16459
94	12220, 12221
97	12473, 16460

48 CFR

PROPOSED RULES:

Ch. I	12225
3	13053
4	13053
5	13053
20	13053
25	13053
28	13053

49 CFR

171	14195
173	14195
178	14198
211	13028

49 CFR—Continued

230	11547
531	11548
571	11549
573	11551
575	15721
1001	13029
1011	12426
1033	11783-
12041, 12195, 12196, 13030, 15494	
1124	11783
1125	13030, 16016
1127	16402
1245	11551
1246	11551

PROPOSED RULES:

Ch I-VI	11674
171	11569, 12826
172	11569, 12826, 15748
173	11569, 12826
174	11569, 12826
175	11569, 15748
176	11569, 12826
177	11569, 12826
178	12826
179	12826

49 CFR—Continued

PROPOSED RULES—Continued

191	12070
395	12717
571	12072, 16461
575	15748
581	11569
1082	12473
1331	12074, 12718

50 CFR

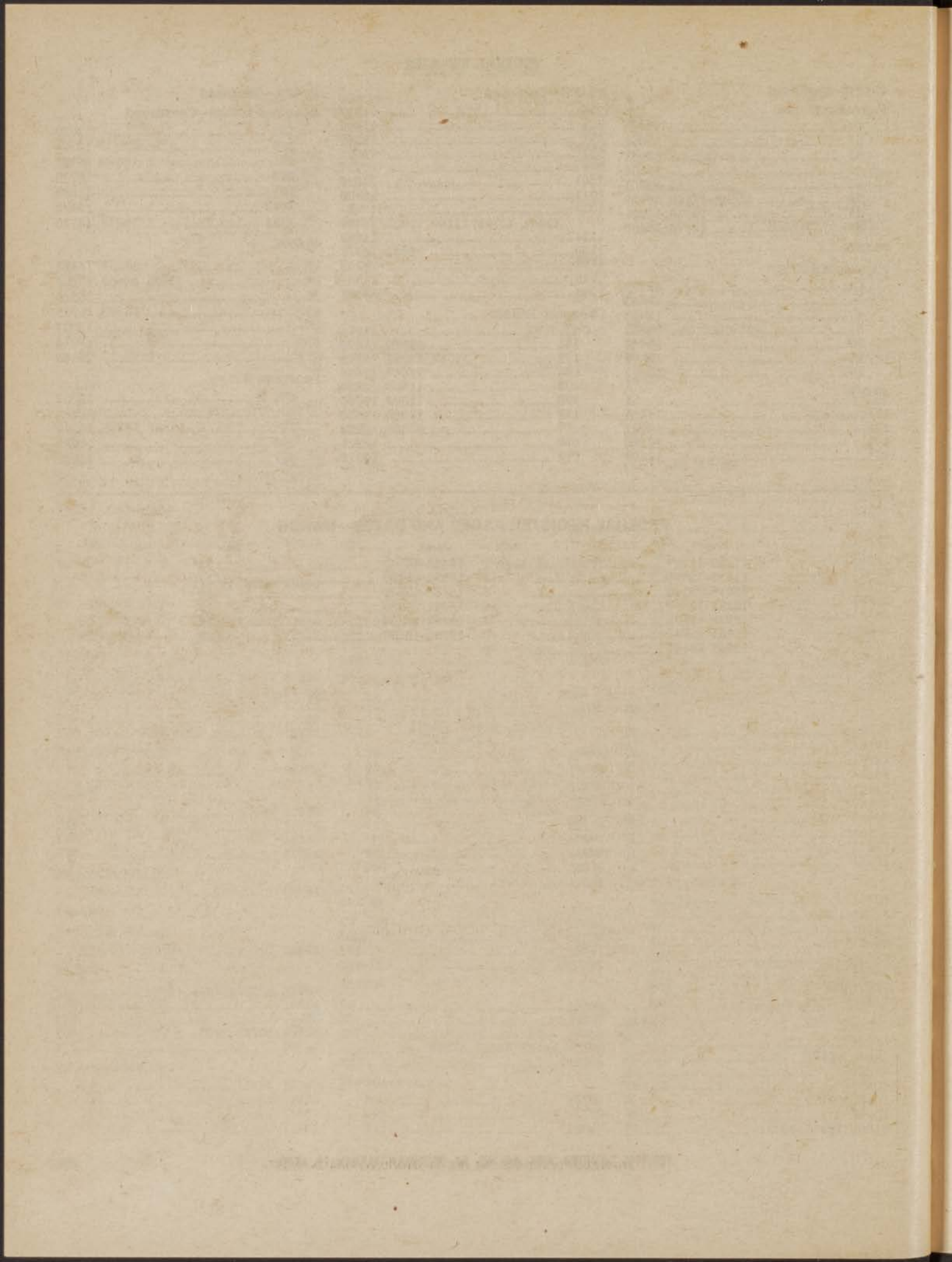
26	13031, 15495
33	12681-12683, 15724
96	15500
611	15503, 15726
651	16017
653	16018
671	15503

PROPOSED RULES:

Ch. II	12562
Ch. VI	12562
17	12382, 12386, 12390
260	16025
651	11571

FEDERAL REGISTER PAGES AND DATES—MARCH

Pages	Date	Pages	Date
11517-11727	Mar. 1	13435-14531	12
11729-12015	2	14533-15463	13
12017-12149	5	15465-15640	14
12151-12397	6	15641-15985	15
12399-12599	7	15987-16354	16
12601-12951	8	16355-16877	19
12953-13434	9		



presidential documents

Title 3—
The President

Proclamation 4645 of March 15, 1979

National Farm Safety Week, 1979

By the President of the United States of America

A Proclamation

America is blessed with an efficient and productive agriculture. As a result, we enjoy an abundance of high-quality food products at a lower cost relative to personal income than in most other countries. This abundance permits a strong flow of food exports, contributing many billions of dollars to our trade balance and enabling us to help relieve hunger in many parts of the world.

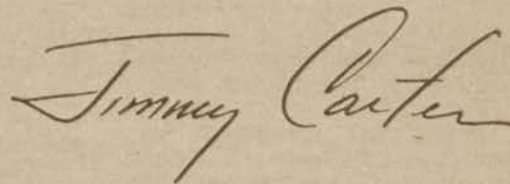
One of the most persistent barriers to agricultural well-being has been farm accidents. Last year, there were more than a half-million farm and ranch residents who suffered disabling injuries, many of which were handicapping or fatal. The cost of those accidents approached \$5 billion. The pain and personal loss to the injured and to their families and friends cannot be measured.

It has been proven that most accidents on farms and ranches can be prevented by controlling hazards, ending unsafe practices and by the use of protective equipment. The effects of many injuries can be lessened if prompt and correct actions are taken subsequent to the accidents and disasters. The time and effort invested in these activities is relatively small, compared to the losses America sustains every year through farm accidents.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week of July 25 through July 31, 1979, as National Farm Safety Week. I urge all who live and work on the Nation's farms and ranches to employ every needed safety precaution and practice, at work and in recreation, at home and on the highway. I also ask those who serve agricultural producers to support their accident-reducing efforts by providing encouragement and educational aids. We must succeed in this important task, as no Nation with concern for the well-being of its people can afford to lose such vital human and productive resources. A safer agriculture will be economically stronger and more productive, thereby benefitting us all.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of March, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

[FR Doc. 79-8307
Filed 3-15-79; 2:23 pm]
Billing code 3195-01-M



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-01-M]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revision of Delegations of Authority AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the position of Under Secretary for International Affairs and Commodity Programs established by Pub. L. 95-501, the establishment of a new Office of Transportation and changes the title of the Assistant Secretary for Marketing Services to Assistant Secretary for Marketing and Transportation Services. This document also reflects the transfer of certain agriculture transportation functions from various USDA agencies to the new Office of Transportation in order to reduce overlapping and duplication of efforts and to provide better service to the public.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Ron Schrader, Acting Director, Office of Transportation, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8255.

Subpart A—General

1. Section 2.4 is revised to read as follows:

§ 2.4 General Officers.

The work of the Department is under the supervision and control of the Secretary, who is assisted by the following general officers: The Deputy Secretary; the Under Secretary for International Affairs and Commodity Programs; the Assistant Secretary for Conservation, Research and Education; the Assistant Secretary for Food and Consumer Services; The Assistant Secretary for marketing and Transportation Service; the Assistant Secretary for Rural Development; the Gen-

eral Counsel; the Director of Economics, Policy Analysis and Budget; the Director, Governmental and Public Affairs; the Assistant Secretary for Administration; the Inspector General; and the Judicial Officer.

2. The heading and text of § 2.5 is revised to read as follows:

§ 2.5 Order in which Officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, dated January 13, 1977 (42 FR 3295), in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs shall act as Secretary.

(b) In the case of the absence, sickness, resignation, or death of the Secretary, the Deputy Secretary, and the Under Secretary for International Affairs and Commodity programs, the Assistant Secretary for Conservation, Research, and Education; the Assistant Secretary for Food and Consumer Services; the Assistant Secretary for Marketing and Transportation Services; and the Assistant Secretary for Rural Development shall act as Secretary in the order in which they have taken offices as an Assistant Secretary.

In the event that any two or more Assistant Secretaries shall have taken office simultaneously, they shall act as Secretary in the order in which they are listed herein.

(c) In the case of the absence, sickness, resignation, or death of the Secretary, the Deputy Secretary, the Under Secretary for International Affairs and Commodity programs, and the Assistant Secretaries referred to in paragraph (b) of this section, the General Counsel shall act as Secretary.

3. The heading of Subpart C is amended to read as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

4. Section 2.17 is amended by revising the heading and paragraph (a)(1), revoking and reserving paragraph (a)(2) and adding a new paragraph (d) as follows:

§ 2.17 Delegations of Authority to the Assistant Secretary for Marketing and Transportation Services.

(a) *Related to agricultural marketing.* (1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) [Revoked and reserved]

(d) *Related to agricultural transportation.* (1) Exercise the function of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(2) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(3) Apply economics research findings in the analysis of agriculture transportation issues.

(4) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(5) Coordinate Department programs of education, information, loans, and grants in the area of agricultural transportation.

5. Section 2.17 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraphs (a)(3)(IX), (XXIV), XXVII, (XXIX), (XXX), and (XXXI) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs".

6. Section 2.21 is amended by amending the heading and revoking and reserving paragraph (d)(22) as follows:

§ 2.21 Delegations of Authority to the Under Secretary for International Affairs and Commodity Programs.

(d) *Related to foreign agriculture*

(22) [Revoked and reserved]

7. Section 2.21 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in the preamble, and in paragraphs (b)(13) and (c) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs"; and by deleting the term "Assistant Secretary for Marketing Services" in paragraphs (b)(30) and (d)(7) and substituting in lieu thereof the term "Assistant Secretary for Marketing and Transportation Services".

8. The heading for Subpart F is revised to read as follows:

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Transportation Services

9. The heading and the text of § 2.49 is revised to read as follows:

§ 2.49 Deputy Assistant Secretary for Marketing and Transportation Services.

(a) *Delegations.* Pursuant to § 2.17, subject to reservations in § 2.18, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Transportation Services to the Deputy Assistant Secretary for Marketing and Transportation Services, to be exercised only during the absence or unavailability of the Assistant Secretary:

(1) Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Transportation Services.

10. Section 2.50 is amended by revising paragraphs (a), (a)(1), (a)(7) and (b) and revoking and reserving paragraph (a)(2) as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) Pursuant to § 2.17 (a) and (e), subject to reservations in § 2.18(a), the following delegations of authority are made by the Assistant Secretary for Marketing and Transportation Services to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) [Revoked and reserved]

(7) Provide management support services for the Federal Grain Inspection Service and the Office of Transportation as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, messenger and paperwork management, and related administrative services.

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Marketing and Transportation Services.

§ 2.51 [Amended]

11. Section 2.51 is amended by deleting the term "Assistant Secretary for Marketing Services" in paragraph (a) and substituting in lieu thereof the term "Assistant Secretary for Marketing and Transportation Services".

12. A new § 2.52 is added as follows:

§ 2.52 Director, Office of Transportation.

(a) *Delegations.* Pursuant to § 2.17(d), the following delegations of authority are made by the Assistant Secretary for Marketing and Transportation Services to the Director, Office of Transportation:

(1) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(2) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(3) Apply economics research findings in the analysis of agriculture transportation issues.

(4) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(5) Coordinate Department programs of education, information, loans and grants in the area of agriculture transportation.

§ 2.52 [Amended]

13. Section 2.53 is amended by deleting the term "Assistant Secretary for Marketing Services" in paragraphs (a) and (b) and substituting in lieu thereof the term "Assistant Secretary for Marketing and Transportation Services".

14. The heading of Subpart H is amended to read as follows:

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

15. The heading and text of § 2.63 is amended to read as follows:

§ 2.63 Deputy Under Secretary for International Affairs and Commodity Programs.

(a) *Delegations.* Pursuant to § 2.21 subject to reservations in § 2.22 and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for International Affairs and Commodity Programs to the Deputy Under Secretary for International Affairs and Commodity Programs, to be exercised only during the absence or unavailability of the Under Secretary.

(1) Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for International Affairs and Commodity Programs.

§ 2.64 [Amended]

16. Section 2.64 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraph (a) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs".

§ 2.65 [Amended]

17. Section 2.65 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraphs (a) and (b) and substituting the term "Under Secretary for International Affairs and Commodity Programs"; and by deleting the term "Assistant Secretary for Marketing Services" in paragraph (a)(30) and substituting in lieu thereof

the term "Assistant Secretary for Marketing and Transportation Services".

18. Section 2.66 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraph (a) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs" and by revoking paragraph (a)(12) as follows:

§ 2.66 General Sales Manager.

(a) *Delegations.* * * *

(12) [Revoked and reserved]

§ 2.67 [Amended]

19. Section 2.67 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraphs (a) and (b) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs".

§ 2.68 [Amended]

20. Section 2.68 is amended by deleting the term "Assistant Secretary for International Affairs and Commodity Programs" in paragraph (a) and substituting in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs"; and by deleting the term "Assistant Secretary for Marketing Services" in paragraph (a)(7) and substituting in lieu thereof the term "Assistant Secretary for Marketing and Transportation Services".

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subparts A, C & H:

Dated: March 14, 1979.

BOB BERGLAND,
Secretary of Agriculture.

For Subpart F:

Dated: March 14, 1979.

P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing
and Transportation Services.

[FR Doc. 79-8256 Filed 3-16-79; 8:45 am]

[3410-08-M]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amdt. No. 102]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

GOOD FAITH RELIANCE ON MISREPRESENTATION

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends § 401.107 of the Federal Crop Insurance Corporation (FCIC) Regulations by raising the dollar level at which the Manager of the Federal Crop Insurance Corporation, under authority given him by the Board of Directors, may make the necessary findings and grant appropriate relief to an insured in cases involved good faith reliance on misrepresentation. This rule also makes provision for granting relief to insureds for additional premium indebtedness in the same type of cases.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: Section 401.107 of the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years (35 FR 3279, February 21, 1970, as amended by 37 FR 18611, September 14, 1972, and 39 FR 16471, May 9, 1974), provides that the Board of Directors or the Manager, in cases involving not more than \$5,000, may grant the same relief to the insured as if the insured was otherwise entitled where it is found that the insured suffered a crop loss which was not insured or for which he was not entitled to an indemnity as a result of the insured's good faith reliance on the misrepresentation or other erroneous action or advice by Corporation personnel, and that it would not be fair and equitable to deny the insured's entitlement to such indemnity.

In view of the present day farming practices and the size of some farm operations, it is possible that a large number of good faith reliance on misrepresentation cases would involve more than \$5,000. Accordingly, it has been determined by the Board of Directors that the authority of the Manager to handle such cases should be raised to \$20,000 to relieve the Board

of handling such cases except in cases where the amount involved exceeded \$20,000.

In addition, Amendment No. 102 provides that, in good faith reliance on misrepresentation cases, where the insured may be indebted to the Corporation for additional premiums through erroneous action or advice given by an agent or employee of the Corporation, the Board and the Manager are authorized to grant relief. Although the number of such cases is very small, it has been determined that provisions to cover this possibility should be included in the Board's grant of authority to the Manager within the same \$20,000 limitation.

Since this amendment, as outlined below, contains only a change in the monetary level of the delegation of authority to the Manager and authorizes relief for additional premium indebtedness which is consistent with the present authority to grant relief in connection with indemnities, the Board of Directors of the Corporation has determined that it is unnecessary to follow the procedure for notice and public participation prescribed by the Administrative Procedure Act (5 U.S.C. 553 (b) and (c) and the requirements of Executive Order 12044.

FINAL RULE

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years, as amended (7 CFR 401.101 et seq.), are hereby amended effective with the 1979 and succeeding crop years by amending § 401.107 to read as follows:

§ 401.107 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the insurance contract, whenever (a) an insured person under any contract of crop insurance entered into under these regulations, or any other regulations in this chapter issued pursuant to the Federal Crop Insurance Act, as amended, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or em-

ployee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

(Secs. 506, 516, 52 Stat. 73, as amended 77, as amended; (7 U.S.C. 1506, 1516).)

Approved by the Board of Directors on December 20, 1978.

Dated: March 5, 1979.

PETER F. COLE,
Secretary, Federal Crop
Insurance Corporation.

Approved: March 13, 1979.

BOB BERGLAND,
Secretary.

[FR Doc. 79-8115 Filed 3-16-79; 8:45 am] ch

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management; Extension of Interim Fuel Cycle Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the interim fuel cycle rule.

SUMMARY: The Commission promulgated on March 14, 1977, (42 FR 13803) an interim rule identifying the environmental impact values for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission extended the period of effectiveness through March 14, 1979 and now finds good cause to enlarge this period until April 30, 1979.

DATE: The interim rule published at 42 FR 13803, March 14, 1977 (10 CFR 51.20(e)) is extended until April 30, 1979.

FOR FURTHER INFORMATION CONTACT:

E. Leo Slaggie, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, phone 202-634-3224.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Nuclear Regulatory Commission has extended through April 30, 1979 the effectiveness of the interim fuel cycle rule, 10 CFR 51.20(e) ("table S-3," as revised). The Commission finds this extension desirable to avoid disruption in licensing procedures during the closing stage of preparing a final rule.

BACKGROUND

The status of the Commission's interim fuel cycle rule and the course of the final rulemaking up to the submission of the Hearing Board's report on the extensive evidentiary record were reviewed in the notice of September 18, 1978 (43 FR 41373), which extended the interim rule through March 14, 1979. The purpose of that extension was to retain the advantage of having a fuel cycle rule in place during the time needed for the Hearing Board to prepare its recommendations for a final rule and for the Commission to study the record and the Board's recommendations prior to reaching a final decision in the fuel cycle rulemaking.

The Board's recommendations were submitted on October 26, 1978. At the request of several participants in the rulemaking, the Commission accepted written comments on the Board's recommendation and subsequently heard oral presentations on January 19, 1979. These additional procedures proved valuable but have left the Commission short of time needed to prepare a thorough explanation of its decision before the interim rule expires.

Accordingly, the Commission is again confronted with the question whether there is good cause to extend the interim rule for an additional period pending promulgation of a final rule. The advantages of keeping the interim rule in place until a final rule is promulgated remain as before. In previously extending the interim rule the Commission relied in part on the Hearing Board's view that the rulemaking record supported an extension for a reasonable period. The Commission has now had an opportunity to study these matters further for itself and has agreed with the thrust of the Hearing Board's recommendations. This is not to say that the Commission has found the interim rule or the proposed final rule, from which the interim rule differs only slightly, free of flaws. The Hearing Board's recommendations and participants' comments to

the Commission identified several issues which will be carefully addressed in the Commission's statement of consideration. The Commission continues to believe, however, that the advantage of leaving the interim rule in place outweighs the risk that use of the rule will lead to unsound results.

Accordingly, the Commission finds good cause to extend the period of effectiveness of the interim rule through April 30, 1979.

Dated at Washington, DC, this 13th day of March 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-8299 Filed 3-16-79; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Q; Docket No. R-0211]

PART 217—INTEREST ON DEPOSITS

Maximum Rates of Interest Payable

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended its regulations to prohibit the compounding of interest by member banks on time deposits of \$10,000 or more with maturities of 26 weeks whose ceiling rate of interest is equal to the discount rate on the most recently issued six-month United States Treasury bills (auction average). Member bank advertisements will be required to contain a statement that Federal regulations prohibit compounding of interest during the term of this time deposit category.

EFFECTIVE DATE: March 15, 1979.

FOR FURTHER INFORMATION, CONTACT:

Allen L. Raiken, Associate General Counsel ((202) 452-3625), or Gilbert T. Schwartz, Senior Attorney ((202) 452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective June 1, 1978, the Board created a new category of time deposit whose ceiling rate is tied to the discount rate on six-month U.S. Treasury bills. The Board's action authorized member banks to pay interest on time deposits of \$10,000 or more with matu-

rities of exactly 26 weeks at a rate up to the discount rate (auction average) established for U.S. Treasury bills with maturities of six months that are issued on or immediately prior to the date of deposit. Rounding the rate to the next higher rate is not permitted on this category of deposit.

At the time the new money market time deposit category was created, the Board indicated that compounding of interest on the new category would be permitted. The Board has now determined that effective March 15, member banks may not compound interest on such time deposits received on or after that date during the 26 weeks that the time deposit is outstanding.

Similar action is being taken by the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Administrator of the National Credit Union Administration for depository institutions subject to their respective jurisdictions. In addition, certain adjustments are being made to reduce, in certain circumstances, the maximum rate of interest that may be paid on money market certificates by insured savings and loan associations, savings banks and credit unions. The actions are being taken at this time to reduce somewhat the attractiveness of money market time deposits and to lower the costs being incurred by thrift institutions offering these deposits. This will moderate the flow of funds into such institutions in the current inflationary environment. While this action will affect the savings flows of thrifts, it will permit them to continue to remain competitive in attracting funds for housing.

Because compounding of interest is permitted for all other categories of deposits, the Board believes it appropriate for all member bank advertisements, announcements, and solicitations, including deposit account brochures and other literature, concerning this deposit category to indicate clearly and conspicuously that Federal regulations prohibit the compounding of interest during the term of this deposit. Such notice would serve to inform prospective depositors of a material difference between the money market time deposit category and other time deposits on which compounding is permitted. Member banks may, however, advertise an annual effective rate of interest for money market time deposits based upon reinvestment at maturity of principal and interest earned if such advertisements fully comply with the Board's guidelines issued August 8, 1978, concerning the advertising for money market time deposits. The guidelines provide that if a member bank advertises an annual effective rate that assumes reinvest-

ment of principal and interest at maturity, the advertisement, announcement, or solicitation must contain a clear and conspicuous statement such as the following:

This is an annual rate and is subject to change at renewal.

In addition, the guidelines indicate that any reference to U.S. Treasury bills in a money market time deposit advertisement, announcement, or solicitation requires the disclosure that the rate of interest paid on Treasury bills is the discount rate. Any material that makes reference to the member bank's annual effective yield and to Treasury bills requires the disclosure of the coupon equivalent yield on Treasury bills computed on a comparable basis. Revised guidelines to take into account the Board's present action will be distributed in the near future.

Although compounding of interest during the term of this deposit category is not permitted, the Board has determined that member banks will continue to be permitted to compute simple daily interest on a 360-, 365-, or in a leap year, 366-day basis in accordance with the provisions of § 217.3(e) of Regulation Q.

Member banks may continue to compound interest on money market time deposits issued or renewed prior to the March 15, 1979 effective date of this action. However, upon renewal at maturity, member banks may not compound interest on such deposits. (In this regard, member banks may not extend the maturity of money market time deposits since such obligations must have a maturity of precisely 26 weeks.)

The Board's action was taken at this time, after consultation with the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the United States Department of the Treasury. In order to facilitate the achievement of the previously mentioned objectives as rapidly as possible, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to these actions would be contrary to the public interest and that good cause exists for making the amendments effective in less than 30 days. The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957) were not followed strictly in promulgating this regulation because of the necessity to adopt the change as quickly as possible.

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) to prescribe rules governing the payment and advertisement of interest on deposits, effective March 15, 1979, the Board amends

Regulation Q (12 CFR Part 217) as follows:

1. Section 217.6 is amended by adding paragraph (j) to read:

§ 217.6 Advertising of Interest on Deposits.

(j) Any advertisement, announcement, or solicitation relating to interest paid by a member bank on a time deposit of \$10,000 or more with a maturity of 26 weeks at a rate not in excess of the rate established (auction average on a discount basis) for United States Treasury bills with maturities of six months shall include a clear and conspicuous notice that Federal regulations prohibit the compounding of interest during the term of the deposit.

2. Paragraph (f) of § 217.7 is amended by adding a sentence at the end as follows:

§ 217.7 Maximum rates of interest payable by Member Banks on time and Savings deposits.

(f) Variable rate time deposits of less than \$100,000. * * * Member banks may not compound interest during the term of this deposit.

By order of the Board of Governors of the Federal Reserve System, March 8, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-8158 Filed 3-16-79; 8:45 am]

[8025-01-M]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 9, Amdt. 14]

PART 123—DISASTER LOANS

Procedures for Requesting Disaster Declarations and Time Limit for Request

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On September 19, 1978, a proposed rule was published in the FEDERAL REGISTER (43 FR 42016) formalizing the procedures and time frame within which a physical disaster declaration must be requested by the Governor of the affected State. It also proposed that loans for farm product losses not be approved until the

normal harvest season has passed in order that actual damage assessments will be accurate.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard L. Wray, Financial Analyst, Small Business Administration, 1441 L Street, NW., Washington, D.C., 20416, 202-653-6479.

SUPPLEMENTARY INFORMATION:

As stated in the Summary, proposed regulations were published formalizing Agency procedures governing requests for physical disaster declarations and clarifying when loans for partial farm product losses would be acted upon. Requests for suggestions on criteria for determination when a drought has reached disaster proportions were also solicited. No comments on the proposed rules or request for assistance in defining drought disasters were received. SBA is continuing its attempts to define the criteria for drought disasters as a part of its ongoing review of programs. It has been determined that the proposed rules will be adopted as published since they continue outstanding Agency practice and no adverse impacts have been noted.

Accordingly and pursuant to the authority of Section 5(b)(6) of the Small Business Act (15 U.S.C. 634), Part 123, Chapter I, Title 13 of the Code of Federal Regulations is amended as follows:

1. Section 123.1(a) is amended by adding a new subparagraph (4) as follows:

§ 123.1 General.

(a) *Disaster loan authority.* * * *

(4) *Request by Governor.* When the Governor of a State desires SBA to issue a disaster declaration with respect to a physical disaster in that State, such request with supporting documentation shall be sent to the SBA Regional Office having jurisdiction over that State within 60 days of the occurrence of the disaster. The Regional Office will evaluate the request and forward it, with a recommendation for decline or approval to the Associate Deputy Administrator for Programs, who will forward it to the Administrator with a recommendation for approval or decline. The Administrator will take final action and if the request is approved, publish a notice of disaster declaration in the *FEDERAL REGISTER*. The Administrator may in case of undue hardship extend the filing time for requests.

2. Section 123.2(a)(2)(i) is amended by adding a sentence to the existing

paragraph so that the paragraph as amended reads as follows:

§ 123.2 Eligibility.

(a) * * *

(2) * * *

(i) Assistance may be extended for full or partial farm product losses (crop losses or dead livestock) which have been suffered as a result of a physical disaster. However, no loans will be approved for partial crop losses until the normal harvest season has passed in order that the actual loss will have been ascertained.

(Catalog of Federal Domestic Assistance Program No. 59.008, Physical Disaster Loans).

Dated: March 9, 1979.

WILLIAM H. MAUK, Jr.,
Acting Administrator.

[FR Doc. 79-8110 Filed 3-16-79; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER C—AIRCRAFT

[Docket No. 79-NW-6-AD; Amdt. 39-3439]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection, repair and rework of the electrical wiring incased within conduits between Number 1 and Number 4 main fuel tank boost pumps and the rear spar on Model 747 airplanes. Abrasion of the main tank boost pump electrical wires was found during an inspection of selected airplanes. This Airworthiness Directive is required to prevent inflight fires or explosions due to electrical arcing from the exposed wires to the conduit.

DATES: Effective date: April 19, 1979. Compliance Schedule: As indicated in text of the AD.

ADDRESSES: The Boeing Service Bulletin specified in this directive may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may also be examined at the Federal Aviation Administration, Northwest Region, 9010

East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond M. Bolsenga, Propulsion Section, ANW-214, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, (206) 767-2520.

SUPPLEMENTARY INFORMATION:

Two fuel boost pumps for each fuel tank Number 1 and Number 4 are located in dry bay areas (dog houses) near the outboard end of the Number 2 and Number 3 main fuel tanks. Electrical wiring to the pumps is installed in aluminum conduits routed through the Number 2 and Number 3 tanks between the wing spar and the dog houses. Recently, one operator, investigating the cause of a fuel leak in an auxiliary fuel tank, found a small hole burned through the conduit that houses the electrical wires to the auxiliary fuel tank boost pump. According to the report, a wire had abraded against the inner conduit wall and arced from the conductor to the conduit, producing a hole through which fuel escaped. To prevent possible inflight fires and/or explosions in the auxiliary fuel tanks, a telegraphic Airworthiness Directive was issued on December 22, 1978.

The conduit and wiring installations for the main tanks are similar, but not identical, to the auxiliary fuel tank wiring installations. An inspection of the Number 1 and Number 4 main fuel tank boost pump wiring was initiated on airplanes in airline service in order to evaluate the possible extent of wire chafing existing on airplanes in the airline fleet. Results of the survey indicate that chafing and/or abrasion has occurred on those main tank boost pump wires. Initial findings from the survey indicate that the degree of wire insulation damage is related to airplane flight hours and type of wire insulation.

Since this condition is likely to exist or develop in other airplanes of this same type design, an Airworthiness Directive is being issued to require removal of each wire bundle from the Number 1 and Number 4 main tank boost pump wire conduits, cleaning and close inspection for damage of each wire in the bundles, repairing or replacement of damaged wires as necessary, tying the wire bundles at six-inch intervals, installing two teflon sleeves over the wires and then reinstalling the bundles in the respective conduits. Accomplishment of the above in accordance with Boeing Service Bulletin No. 747-28-A2092 is to be considered terminating action for this Airworthiness Directive.

The number of hours time in service compliance time for the inspection, repair and modifications has been established by the agency on the basis of safety considerations, and is the same as that recommended by the manufacturer in the applicable service bulletin. This compliance time provides the lead time for operators to schedule and plan compliance with the AD with a minimum burden. To prescribe the inspection, repair and modifications required by this AD under the usual notice and public procedures followed by the agency within the time the agency has determined is required in the interest of safety, would necessarily result in a reduction of the compliance time for the inspection, repair and modifications required by this AD. This could possibly leave the operators insufficient time to schedule airplanes for compliance with the AD. Therefore, accomplishment of the inspection, repair and modifications required by this AD within the time the agency has determined is necessary, makes strict compliance with the notice and public procedure provisions of the Administrative Procedure Act impracticable and this amendment becomes effective 30 days after publication in the FEDERAL REGISTER. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 79-NW-6-AD, 9010 East Marginal Way South, Seattle, Washington 98108. All communications received before the effective date will be considered by the Administrator, and the AD may be changed in the light of comments received. All comments will be available both before and after the effective date in the Rules Docket for examination by interested persons. Operators are urged to submit their comments as early as possible since it may not be possible to evaluate comments received near the effective date in sufficient time to amend the AD before it becomes effective.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

BOEING: Applies to Boeing Model 747 series airplanes certificated in all categories. Compliance required as indicated on Group I and Group II airplanes as identified in Boeing Alert Service Bulletin 747-28-A2092. To prevent abrasion of

fuel tank boost pump electrical wires, accomplish the following:

A. Within 750 hours time in service or two (2) months after the effective date of this Airworthiness Directive, whichever comes first, unless already accomplished on Group I airplanes with 30,000 hours or more time in service and Group II airplanes with 6000 hours or more time in service, inspect, repair and modify the Number 1 and Number 4 main fuel tank boost pump wiring in the conduits in main fuel tanks Numbers 2 and 3 in accordance with Boeing Alert Service Bulletin 747-28-A2092 dated February 12, 1979, or later FAA approved revision. Equivalent inspections, repairs and modifications may be used when approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, Post Office Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective April 19, 1979.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89)

NOTE: The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by Interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Seattle, Washington, on March 9, 1979.

C. B. WALK, Jr.,
Director, Northwest Region.

NOTE:—The incorporation by reference provisions in the documents were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

[FR Doc. 79-7992 Filed 3-16-79; 8:45 am]

[4910-13-M]

[Docket No. 79-SO-22, Amdt. 39-3437]

PART 39—AIRWORTHINESS DIRECTIVES

Gulfstream American Corp. (Formerly Grumman American Aviation Corp.); Models G-159 and G-1159

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An emergency airworthiness Directive (AD) was adopted on

February 16, 1979, and made effective immediately upon receipt of an airmail letter to all United States operators of Gulfstream American Model G-159 and G-1159 airplanes. Copies of that letter have been sent also to foreign civil aviation authorities having bi-lateral agreements with the United States, and to foreign civil aviation authorities that have reported this make and these models aircraft having been entered on their registries. This directive required, prior to further flight, inspection of the aircraft engine and APU fire bottle installations to determine the presence of electrical shunt that may have been left inadvertently attached across the fire extinguisher cartridge terminals; and removal of any shunts so installed. This AD was needed to assure normal fire extinguisher operation.

DATES: This amendment is effective April 2, 1979, and was effective upon receipt for all recipients of the airmail letter dated February 16, 1979.

ADDRESSES: Gulfstream American Alert Customer Bulletins No. 11 for Model G-159, and No. 17 for Model G-1159, both dated February 16, 1979, may be obtained from the Gulfstream American Corporation, Product Support Department, Travis Field, P.O. Box 2206, Savannah, Georgia 31402.

Copies of these bulletins are located in Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Ga. 30344.

FOR FURTHER INFORMATION CONTACT:

W. S. Thomas, Aerospace Engineer, Engineering and Manufacturing Branch, Flight Standards Division, FAA, P.O. Box 20636, Atlanta, Ga. 30320, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: An operator of a Gulfstream American Model 1159 reported that inspection revealed the presence of electrical shunts that had been left inadvertently installed across the terminals on all three fire extinguisher bottle cartridges. Such shunts are installed for shipping safety and must be removed for normal fire extinguisher bottle discharge in the event of fire in an engine or APU installation. These shunts may have been left installed inadvertently upon initial fire bottle installation, or at any time a fire bottle has been removed and replaced. In addition, there is no other means than visual inspection to determine that the shunts have been removed. Since the same extinguisher bottles and cartridges are used in Model G-159 airplanes, this condition may exist also on airplanes of that model.

Since a situation existed that required immediate corrective action, it

was found that notice and public procedure thereon were impractical and contrary to the public interest, and good cause existed for making the AD effective immediately to all known United States operators of Gulfstream American Models G-159 and G-1159 by the airmail letters dated February 16, 1979. This condition still exists and the emergency AD, as issued except for added information, is hereby published in the Federal Register.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

GULFSTREAM AMERICAN (formerly Grumman American Aviation Corporation). Applies to Model G-159, all serial numbers; and to Model G-1159, serial numbers 1 through 238 and 775, certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent a potential hazard caused by inability to discharge the engine or APU fire extinguisher bottles, accomplish the following:

(1) Inspect the cartridge terminals on each aircraft engine and APU fire extinguisher bottle (container) for the presence of electrical shunts. Shunts are installed for safety in shipping and handling and inadvertently may have been left installed.

(2) Remove any electrical shunts found on the cartridge terminals, using procedures in the applicable aircraft maintenance manual.

Gulfstream American Alert Customer Bulletins No. 11 for Model G-159, and No. 17 for Model G-1159, both dated February 16, 1979, pertain to this subject.

This amendment is effective April 2, 1979.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89))

Issued in East Point, Ga., on March 7, 1979.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 79-7990 Filed 3-16-79; 8:45 am]

[4910-13-M]

[Airworthiness Docket No. 79-ASW-8,
Amdt. 39-3438]

PART 39—AIRWORTHINESS DIRECTIVES

Mooney Aircraft Corp. Models M20F and M20J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive which applies to Mooney M20F and M20J

aircraft with registration as indicated and equipped with Edo-Aire Mitchell Century III autopilot, Model AK523 in accordance with STC SA3047SW-D. The amendment is needed to assure that the pitch servo push rod and capstan will not travel over center and lock the aircraft elevator control system in the nose down position.

DATES: Effective date: March 26, 1979. Compliance schedule as prescribed in body of A.D.

ADDRESSES: The applicable service bulletin may be obtained upon request to: Director, Products and Service, Edo-Aire Mitchell, P.O. Box 610, Municipal Airport, Mineral Wells, Texas 76067, telephone number 817-325-2517. A copy of the service bulletin is contained in the Public Docket at Room 916, 800 Independence Avenue SW, Washington, D.C. 20591 or at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:

Tommie S. Plummer, Systems and Equipment Section (ASW-213.7), Engineering and Manufacturing Branch, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101, Telephone number 817-624-4911, extension 518.

SUPPLEMENTARY INFORMATION:

The FAA has received a report of a locked over center elevator servo in a Mooney Model M20J aircraft equipped with an Edo-Aire Mitchell Century III autopilot. This condition occurred during a preflight check of the autopilot and elevator control system. Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires inspection of 25 Mooney M20F and M20J aircraft of known registration number to determine whether an elevator servo stop bracket is installed. If there is no stop bracket installed, one can be obtained from Edo-Aire Mitchell free of charge. Edo-Aire Mitchell is authorizing their distributors \$20.00 labor allowance for each inspection and installation.

A situation exists that requires the immediate adoption of this regulation, and parts and a labor allowance are furnished by the autopilot manufacturer with only a service scheduling burden on the aircraft owners and operators. Therefore, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal

Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive.

Mooney. Applies to models M20F and M20J, registration numbers: N3207F, N201A, N9545M, N201WX, N201EU, N201MF, N201TN, N201MR, N201NW, N201WT, N201TS, N201KJ, HB-DWK, N201YD, N201YB, N201WE, N201JF, OE-DHM, N201TW, N201ND, N201MS, N201GJ, N201WM, N201MW, and N201SE.

Compliance is required within the next 25 hours of flight time after the effective date of this Airworthiness Directive (unless already accomplished).

To prevent elevator control lock, accomplish the following:

1. Inspect the pitch servo installation in accordance with Edo-Aire Mitchell Service Bulletin MB-14 dated 3/30/78 and assure servo stop bracket part number 7B1320 is installed and adjusted in accordance with SB MB-14, paragraph 5.

2. If servo stop bracket is not installed, accomplish the installation in accordance with Service Bulletin MB-14.

This amendment becomes effective March 26, 1979.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89))

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Texas, on March 8, 1979.

PAUL J. BAKER,
Acting Director,
Southwest Region.

NOTE.—The incorporation by reference provisions in this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 79-7988 Filed 3-16-79; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-107]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND RE- PORTING POINTS

Designation of Transition Area: Petersburg, W. Va.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will designate a Petersburg, W. Va., transition area over Grant County Airport, Petersburg, W. Va. This designation will protect aircraft using the IFR departure and arrival procedures for the airport.

This designation results from establishment of a new NDB instrument approach to the airport.

EFFECTIVE DATE: 0901 G.m.t., April 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J. F. K. International Airport, Jamaica, New York 11430, telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: An NPRM was published in the *FEDERAL REGISTER* on page 58827 on Monday, December 18, 1978, so as to propose additional controlled airspace protection for IFR arrivals into the Grant County Airport.

This rule will designate a transition area with a 5-mile radius around the airport and with a 20 by 10 mile extension to the north and 8.5 by 6 miles to the southeast.

Interested parties were given an opportunity to submit comments on the proposal. The Department of the Navy has noted the possibility of delays because of conflicts between users of the NDB approach and Navy aircraft using amongst other routes, IR-720. It is conceded that some delays may appear but as suggested by the Navy, they will be well within the capability for solution of air traffic control. There were no further objections.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. April 5, 1978, as published.

(Sec. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(c)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Issued in Jamaica, New York, on March 2, 1979.

L. J. CARDINALI,
Acting Director,
Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by designating a Petersburg, West Virginia, 700-foot floor transition area as follows:

PETERSBURG, W. VA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center 38°59'35"N., 79°08'34"W., of Grant County Airport, Petersburg, W. Va.; within 3 miles each side of the 116° bearing from the Dorcas, W. Va., RBN (38°59'26"N., 79°08'34"W.), extending from the RBN to 8.5 miles southeast of the RBN; within 5 miles each side of the 357° bearing from the

Dorcas, W. Va. RBN, extending from the RBN to 20 miles north of the RBN.

[FR Doc. 79-7986 Filed 3-16-79; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-S0-72]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area, Donalsonville, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule alters the Donalsonville, Georgia, transition area and lowers the base of controlled airspace in the vicinity of the Donalsonville Municipal Airport from 1200 to 700 feet AGL to accommodate Instrument Flight Rule (IFR) operations. A new public use instrument approach procedure has been developed for the Donalsonville Municipal Airport, and the additional controlled airspace is required to protect aircraft executing the approach procedure.

EFFECTIVE DATE: April 26, 1979.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT:

Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the *FEDERAL REGISTER* on Monday, December 18, 1978 (43 FR 58826), which proposed the alteration of the Donalsonville, Georgia, Transition Area. No objections were received from this Notice.

ADOPTION OF THE AMENDMENT

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., April 26, 1979, as follows:

DONALSONVILLE, GEORGIA

"* * * Donalsonville Airport * * *" is deleted and "Donalsonville Municipal Airport * * *" is substituted therefor.

"* * * within 3 miles each side of the 188° bearing from the Donalsonville RBN (latitude 31°00'37"N., longitude 84°52'32"W.), extending from the 6.5

mile radius area to 8.5 miles south of the RBN * * *" is added.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by Interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in East Point, Ga., on March 8, 1979.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 79-7991 Filed 3-16-79; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-66]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area: Summersville, W. Va.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule will designate a Summersville, W. Va., transition area, over Summersville Airport, Summersville, W. Va. This designation will provide protection to aircraft executing the new SDF RWY 4 and NDB RWY 4 standard instrument approaches which have been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 G.m.t. April 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: An NPRM was published in the *FEDERAL REGISTER* on page 37709 on Thursday, August 24, 1978, so as to provide additional controlled airspace protection for IFR arrivals into the Summersville Airport, Summersville, W. Va. The area is designated by establishing controlled airspace within a 6.5-mile radius arc of the airport and

an extension 9 miles wide reaching to approximately 14 miles to the southwest. Interested parties were given an opportunity to submit comments on the proposal. No objections were received.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. April 12, 1979, as published.

(Sec. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.69).

Issued in Jamaica, New York, on March 2, 1979.

L. J. CARDINALI,

Acting Director, Eastern Region.

1. Amend § 71.181 of part 71 of the Federal Aviation Regulations by designating a Summersville, West Virginia, 700-foot floor transition area as follows:

SUMMERSVILLE, W. VA.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center, 38°13'50" N., 80°52'15" W., of Summersville Airport, Summersville, W. Va.; within 4.5 miles each side of a 035° bearing and a 215° bearing from the Nicholas, W. Va., RBN (38°10'30" N., 80°55'13" W.), extending from 4.5 miles northeast of the RBN to 9 miles southwest of the RBN; within 3.5 miles each side of a 214° bearing from the Nicholas, W. Va. RBN, extending from the RBN to 11 miles southwest of the RBN.

[FR Doc. 79-7987 Filed 3-16-79; 8:45 am]

[1505-01-M]

[Airspace Docket No. 79-WA-1]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Areas

Correction

In FR Doc. 79-6679 appearing on page 12640 in the issue for Thursday, March 8, 1979, first column, eleventh line from the bottom, "30°23'46" N." should read "30°23'00" N."

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

Subpart B—Rules and Rulemaking Under Sec. 18(a)(1)(B) of the FTC Act As Amended by Public Law 93-637

Subpart C—Rules and Rulemaking

TRADE REGULATION RULEMAKING PROCEDURES

AGENCY: Federal Trade Commission.

ACTION: Interim rule.

SUMMARY: The rule establishing procedures for handling communications by persons not employed by the Commission to Commissioners or Commission advisors with respect to trade regulation rulemaking proceedings is being amended to permit such communications under certain circumstances. The Rules of Practice are also being amended to apply similar procedures to the Commission's other substantive rulemaking proceedings. While this interim rule is effective immediately, the Commission invites comments. The Commission will review all comments received and take whatever action, if any, it deems appropriate.

DATES: This interim rule is effective March 19, 1979.

Comments are invited and must be received on or before April 18, 1979.

ADDRESS: Send comments to Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Sheehan, Attorney, Office of General Counsel, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580; (202) 523-3865.

SUPPLEMENTARY INFORMATION: On September 1 and November 28, 1977, (42 FR 43973 and 60561), the Commission announced a rule, Rule 1.18(c), that prohibits communications to Commissioners or their personal staffs from persons not employed by the Commission with respect to the merits of pending trade regulation rulemaking proceedings (hereafter referred to as "outside communications"). Based on its experience with Rule 1.18(c), the Commission has determined to amend it to permit outside

communications at certain stages of the rulemaking proceedings so long as the contents of such communications are made fully available to the public. (The specific changes in the rule are discussed in more detail below.)

The present total ban on outside communications was adopted by the Commission to preserve the integrity of the rulemaking process and to avoid the appearance of unfair access to decisionmakers. After more than a year's experience with this rule, the Commission believes that these goals can be achieved by means of a less restrictive rule that would permit the Commission to obtain potentially useful access to information from persons outside the Commission without impairing the rulemaking process itself. The requirement that communications be made available to the public ensures that a full and complete record is accessible both to persons participating in the proceeding and to a reviewing court. This approach is consistent with that taken by the Administrative Conference of the United States in its Recommendation 77-3, 1 CFR 305.77-3, and has received the endorsement of Professor Davis. See Davis, *Administrative Law Treatise* 553-54 (2nd ed. 1978). The amended rule would permit the Commission to receive information to assist in its decisionmaking process that it is presently prohibited by its rules from considering. An example of this problem is the numerous letters that are mistakenly addressed to Commissioners by members of the public who desire to submit comments for the record. Under the present rule such letters are "prohibited communications" and the Commission is unable to consider the comments contained in these letters. Similarly, the present prohibition on oral outside communications prevents an individual Commissioner from engaging in formal discussions that would illuminate a matter of particular interest to that Commissioner. So long as the integrity of the record is protected, the Commission should be permitted access to information that could aid in its deliberations, and the amended rule seeks to strike the appropriate balance between these concerns.

WRITTEN COMMUNICATIONS

The amended rule makes clear that comments on a proposed rule should be directed to the Presiding Officer. Written communications that are directed to a Commissioner or a Commissioner advisor¹ will be treated in the following manner:

¹The change in the rule from "any member of a Commissioner's personal staff" to "any . . . Commissioner advisor" is merely to clarify that clerical personnel in a Commissioner's office, who do not participate in the decisionmaking process, are not within the scope of the rule.

(1) Communications received within the period for acceptance of initial written comments will be forwarded promptly to the Presiding Officer for placement on the rulemaking record.

(2) Communication received after the period for initial written comments but prior to any other deadline for submission of written comments (e.g., rebuttal submissions or post-hearing comments on the staff report) will be forwarded promptly to the Presiding Officer. The Presiding Officer will determine whether the communications comply with the applicable requirements for written submissions at that stage of the hearing (e.g., Rule 1.13(h), 16 C.F.R. § 1.13(h), restricts post-hearing comments to information already in the rulemaking record), and complying communications will be placed on the rulemaking record. Non-complying communications will be placed on the public record.

(3) Communications received after the time periods for acceptance of written submissions will be placed on the public record.

ORAL COMMUNICATIONS

Oral outside communications are permitted only when they are transcribed verbatim and only if they occur prior to the close of the post-record comment period. The provision that such communications be transcribed verbatim will require that meetings between outside persons and a Commissioner or Commissioner advisor involving outside communications be arranged sufficiently in advance so that a transcript of the meeting can be made. Transcripts of oral communications will be treated in the same manner as outside written communications (i.e., depending on their timing and content they will be placed on the rulemaking record or the public record.) If an outside oral communication otherwise occurs, i.e., one that either is not transcribed or is after the close of the post staff report comment period, then the Commissioner or Commissioner advisor will place a transcript of the communication or a memorandum discussing the communication on the public record.

CONGRESSIONAL COMMUNICATIONS

A special situation is created by oral congressional communications which address the merits of a pending rulemaking proceeding (written congressional communications will be treated in the same manner as any other outside written communication). Because such communications typically involve a legitimate exercise of oversight, appropriations or other legislative function, a Commission rule prohibiting

such communications after a certain stage in the rulemaking proceeding or requiring that they be transcribed is clearly inappropriate. Accordingly, the provision of Rule 1.18(c)(2) dealing with oral communications does not apply to communications from members of Congress. To the extent that transcripts of such communications are available they will be treated in the same manner as transcripts of other outside communications; otherwise a memorandum setting forth the contents of any oral congressional communication will be made and placed on the public record.

STARTING PERIOD FOR APPLICATION OF RULE

The present rule prohibits outside communications after commencement of a rulemaking proceeding (i.e., once the notice of proposed rulemaking is published in the *FEDERAL REGISTER*). The Commission has received letters² suggesting that a more appropriate starting period for application of the rule is the one set forth in 5 U.S.C. 557(d)(1)(E):

The prohibition [on *ex parte* contacts] of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

The Commission believes that the concerns expressed in these suggestions are adequately addressed by applying Rule 1.18(c) once the Commission definitely votes to issue a notice of proposed rulemaking. This approach would eliminate any problems caused by a delay in publishing the notice of proposed rulemaking. It is also consistent with the conclusion of the court in *Home Box Office, Inc. v. FCC*, 567 F.2d 9 (D.C. Cir. 1977), "that communications which are received prior to the issuance of a formal notice of rulemaking do not, in general, have to be put in a public file," 567 F.2d at 57; and establishes a definite starting point for the application of the rule.

APPLICATION TO PENDING PROCEEDINGS

With respect to pending rulemaking proceedings, presiding officers are authorized to apply Rule 1.18(c) as amended to communications which were required to be placed on the public record under Rule 1.18(c) as originally adopted so as to transfer such materials to the rulemaking record if they could properly have

²Letters have been received by the Grocery Manufacturers Association and the Center for Auto Safety concerning this issue.

been included there if amended Rule 1.18(c) had been in effect, if the Presiding Officer concludes that such transfer will not substantially prejudice interested persons or participants in the proceeding nor cause undue delay.

OTHER RULEMAKING PROCEEDINGS

At the present time, the only rule concerning outside communications in rulemaking proceedings is Rule 1.18(c), which applies only to trade regulation rulemaking pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a. The Commission noted in its November 28, 1977, announcement (42 FR at 60562) that it was considering extending this rule to other forms of Commission rulemaking. It has now determined to regulate outside communications with respect to its other substantive rulemaking proceedings (i.e., those proceedings governed by the rules in 16 CFR 1.21-1.26) in the same manner as those communications governed by Rule 1.18(c). Because of the widely differing procedural formats for such proceedings—some proceedings for example, have oral hearings while others do not—the Commission is not promulgating a specific rule to cover these proceedings. Instead, future notices initiating proceedings will set forth the specific procedures for the handling of outside communication with respect to that particular proceeding, and Rule 1.26(b), 16 CFR 1.26(b), is being amended to reflect that change.

COMMUNICATIONS FROM THE STAFF

In promulgating Rule 1.18(c), the Commission specifically rejected proposals that staff members who participated in rulemaking proceedings be prohibited from communicating with Commissioners or Commissioner advisors. See 42 FR at 60562 (Nov. 28, 1977). For the reasons set forth at that time, the Commission is continuing its policy of allowing staff communications.³ The Commission does note, however, that Rules 1.18(a) and (b) require that information that the Commission considers relevant to the rule be made part of the rulemaking record and that the rulemaking record be publicly available. These provisions ensure that all information that the Commission relies upon in adopting a rule, including any internally-generated information, will be made part of the rulemaking record and that the Commission will not consider any information not reflected in the final rulemaking record. The Commission believes that this satisfies any applicable requirement that the information

³The Commission notes that its Operating Manual (§ 7.3.5.3.1) prohibits the staff from acting as a conduit for prohibited communications from outside the Commission.

relied upon by the Commission in adopting a rule be made part of the rulemaking record "in some form" and "at some time" so that it may be the subject of appropriate comment and before the courts on judicial review. See *Home Box Office, Inc. v. FCC*, supra, 567 F.2d at 57.

In consideration of the foregoing, 16 CFR Chapter I is amended as follows:

1. By amending § 1.18(c) to read as follows:

§ 1.18 Rulemaking record.

(c) *Communications to Commissioners and their advisor.*—Except as otherwise provided in this subpart or by the Commission, after the Commission votes to issue an initial notice of proposed rulemaking, comment on the proposed rule should be directed to the Presiding Officer pursuant to Rule 1.13. Communications with respect to the merits of that proceeding from any person not employed by the Commission to any Commissioner or Commissioner advisor shall be subject to the following treatment:

(1) *Written Communications.*—Written communications, including written communications from members of Congress, received within the period for acceptance of initial written comments shall be forwarded promptly to the Presiding Officer for placement on the rulemaking record. Written communications received after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the Presiding Officer, who will determine whether such communications comply with the applicable requirements for written submissions at that stage of the proceeding. Communications that comply with such requirements will be promptly placed on the rulemaking record. Noncomplying communications and all communications received after the time periods for acceptance of written submissions will be placed promptly on the public record.

(2) *Oral Communications.*—Oral communications are permitted only when such oral communications are transcribed verbatim and are promptly placed on the rulemaking record. Transcripts of oral communications which occur after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the Presiding Officer, who will determine whether such transcribed oral communications comply with the applicable requirements for written submissions at that stage of the proceeding. Transcribed oral communications that

comply with such requirements will be promptly placed on the rulemaking record. No oral communications are permitted subsequent to the close of the post-staff report comment period.

If an oral communication does otherwise occur, the Commissioner or Commissioner Advisor will promptly place on the public record either a transcript of the communication or a memorandum setting forth the contents of the communication and the circumstances thereof; this memorandum will not be part of the rulemaking record.

(3) *Congressional Communications.*—The provisions of subsection (c)(2) do not apply to communications from members of Congress. Memoranda prepared by the Commissioner or Commissioner Advisor setting forth the contents of any oral congressional communications will be placed on the public record. If the communication occurs within the initial comment period and is transcribed verbatim, the transcript will be promptly placed on the rulemaking record. Transcripts of any oral communication which occurs after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the Presiding Officer, who will determine whether such transcribed oral communications comply with the applicable requirements for written submissions at that stage of the proceeding. Transcribed oral communications that comply with such requirements will be promptly placed on the rulemaking record. Transcribed noncomplying oral communications will be placed promptly on the public record.

2. By amending § 1.26(b) to read as follows:

§ 1.26 Procedure.

(b) *Notice.*—General notice of proposed rulemaking will be published in the *FEDERAL REGISTER* and, to the extent practicable, otherwise made available to interested persons except when the Commission for good cause finds that notice and public procedure relating to the rule are impractical, unnecessary or contrary to the public interest and incorporates such finding and a brief statement of the reasons therefor in the rule. If the rulemaking proceeding was instituted pursuant to petition, a copy of the notice will be served on the petitioner. Such notice will include: (1) a statement of the time, place, and nature of the public proceedings; (2) reference to the authority under which the rule is proposed; (3) either the terms or substance of the proposed rule or description of the subjects and issues in-

volved; (4) an opportunity for interested persons to participate in the proceeding through the submission of written data, views, or arguments; and (5) a statement setting forth such procedures for treatment of communications from persons not employed by the Commission to Commissioners or Commissioner Advisors with respect to the merits of the proceeding as will incorporate the requirements of § 1.18(c), including the transcription of oral communications required by § 1.18(c)(2), adapted in such form as may be appropriate to the circumstances of the particular proceeding.

(15 U.S.C. 46(g)).

By direction of the Commission dated March 9, 1979.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-8107 Filed 3-16-79; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities
Exchanges

CHAPTER II—SECURITIES AND
EXCHANGE COMMISSION

[Release Nos. 33-6027, 34-15578, IC-10597]

PART 231—INTERPRETATIVE RE-
LEASES RELATING TO THE SECURI-
TIES ACT OF 1933 AND GENERAL
RULES AND REGULATIONS THERE-
UNDER

PART 241—INTERPRETATIVE RE-
LEASES RELATING TO THE SECURI-
TIES EXCHANGE ACT OF 1934 AND
GENERAL RULES AND REGULA-
TIONS THEREUNDER

PART 271—INTERPRETATIVE RE-
LEASES RELATING TO THE INVEST-
MENT COMPANY ACT OF 1940
AND GENERAL RULES AND REGU-
LATIONS THEREUNDER

Disclosure of Management
Remuneration

AGENCY: Securities and Exchange
Commission.

ACTION: Interpretation of rules.

SUMMARY: This release supplements the Commission's release which amended the management remuneration disclosure requirements of Item 4 of Regulation S-K, Securities Act Release No. 6003, December 4, 1978, 43 FR 58181, in order to provide further guidance to registrants. The Commission has authorized the Division of Corporation Finance to issue its inter-

pretive views regarding certain aspects of the newly adopted amendments to the management remuneration disclosure requirements, in response to two letters of inquiry from interested persons.

DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Registrants with specific remuneration questions should contact the staff members directly responsible for reviewing the documents they file with the Commission. General questions may be directed to Steven J. Paggioli at (202) 376-8090, Mary A. Binno at (202) 376-8090, or Joseph G. Connolly, Jr. at (202) 755-1456.

SUPPLEMENTARY INFORMATION: The Commission hereby issues Securities Act Release No. (33-6027, 34-15578, IC-10597), Parts 231, 241, and 271 of Title 17, Chapter II of the Code of Federal Regulations as given below.

DISCLOSURE OF MANAGEMENT REMUNERATION

On December 4, 1978, the Commission adopted amendments to the management remuneration disclosure requirements of Regulation S-K Item 4 (17 CFR 229.20.4), Securities Act Release No. 6003, 43 FR 58181. Under the new amendments, Item 4(a) of the Regulation requires individual disclosure of the remuneration of the five most highly compensated executive officers or directors of the registrant whose total cash and cash-equivalent remuneration (required to be disclosed in Columns C-1 and C-2 of the remuneration table under Item 4(a)) exceeds \$50,000.

Under new Item 4(a) the remuneration table is to include remuneration for certain specified persons and groups for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year or, in specified instances, certain prior fiscal years. In this regard, Instruction 2 to Item 4(a) indicates that "Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan or arrangement previously included in the remuneration table for a prior fiscal year."

With regard to the treatment of pension or retirement plans under the new rules, Instruction 3(a)(i) to Item 4(a) requires that the amount expended for financial reporting purposes by the registrant and its subsidiaries for the year representing the contribution, payment, or accrual for the account of the persons or groups specified in Item 4(a) is to be included

in Column D if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events. In the case of defined benefit or actuarial plans, such amounts may be excluded from the remuneration table under Instruction 3(a)(ii) provided that a footnote is included disclosing this exclusion of amounts, indicating the percentage which the aggregate contributions to the plan bears to the total covered remuneration of plan participants, and briefly describing the remuneration covered by the plan. In turn, Item 4(b) requires that, with respect to amounts so excluded under Instructions 3(a)(i) and (ii), a separate table is to be included showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

The Division of Corporation Finance has received two letters from interested persons requesting its interpretive views regarding the above described provisions of Regulation S-K Item 4. Because the questions raised are among those most commonly received by the staff of the Division, the Commission has authorized the Division to issue its interpretive responses in this release, in order to provide further guidance to registrants. The facts giving rise to the interpretive questions and the Division's responses are set forth in the following letters:

Dear Mr. X:

I am responding to your letter of January 12, 1979 in which you requested clarification of certain matters pertaining to the management remuneration disclosure requirements of Regulation S-K Item 4, as amended by Securities Act Release No. 6003, December 4, 1978.

Remuneration Table

Item 4(a) of Regulation S-K requires tabular disclosure of total aggregate remuneration for the five most highly compensated executive officers or directors of reporting entities, naming such persons, and for all officers and directors as a group (the "Remuneration Table"). Also, Instruction 2 to Item 4(a) of Regulation S-K provides for the inclusion in Column C1 of all salaries and fees paid with respect to services rendered during the registrant's last fiscal year and the inclusion in Column C2 of other cash or cash-equivalent amounts.

You indicate that many United States corporations which have operations abroad provide for substantial sums to be paid to employees who, for the convenience of the corporation, are based in areas outside the United States. Such amounts take the form of cost of living allowances, foreign tax reimbursement for taxes paid which exceed taxes that would be payable under United States tax regulations, educational assistance allowances, home leave reimbursement allowances, relocation expenses, and foreign currency exchange adjustments.

Since the sum of these amounts may be substantial in some cases, certain individuals receiving these items, whose responsi-

bility relates solely to managing operations in certain geographic areas, might be ranked among the five most highly compensated executive officers or directors.¹ In your view, this approach might result in a particular executive officer not being individually named in the table without appropriate consideration of the unnamed person's actual position in the corporate structure.

Accordingly, you have requested confirmation that the items listed above and similar items designed only to reimburse individuals for additional costs that must be borne as a result of living in an area outside of the United States² may be excluded in determining the five most highly compensated executive officers or directors of an entity or in reporting aggregate remuneration of officers and directors as a group.

Generally, the determination of which members of management comprise the five most highly compensated executive officers or directors under Regulation S-K Item 4(a), and thus are required to be named in the Remuneration Table, is factual and circumstantial in nature. For example, the Division is aware that due to the nature of the items of remuneration to be included in Columns C-1 and C-2, the inclusion of an amount representing the grant of an unusually large bonus or realization of a large gain on the exercise of an option or other arrangement by a lower level executive officer may result in the person's inclusion among the top five individuals. A corollary result is the possible omission from the Remuneration Table of individual information on a key policy-making executive officer with substantially greater responsibility for the overall operations of the entity.

In this regard, the Division is of the view that management should exercise a measure of flexibility in determining which individuals should be named in the Remuneration Table in order to avoid such anomalous results and to assure that disclosure documents contain information on key policy making members of management. In such cases, the Division believes that registrants properly may determine not to name a particular individual in the Remuneration Table when such person otherwise might nominally be one of the five most highly remunerated executive officers or directors. The types of matters a registrant should consider in exercising its discretion not to so name a person include: (a) The distribution or accrual of an unusually large amount (such as a bonus, commission, or the spread on an option), otherwise required to be re-

¹Instruction 1(a) to Item 4(a) defines an "executive officer" of a person as:

... its president, secretary, treasurer, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), and any other person who performs similar policy-making functions.

As an example, it may be assumed that the registrant has properly reached the determination that ten persons might be categorized as directors or "executive officers" within the above definition; the issue raised in your letter concerns the next determination which is to identify who among those ten are the five most highly remunerated.

²Your letter characterizes the amounts sought to be excluded as payments "designed merely to equalize the 'real' pay of the individual without distortion for higher taxes, living expenses, etc."

flected in Column C-1 or C-2, which has not been part of a recurring arrangement and is unlikely to continue under the terms of the plan or any similar plan; and (b) the distribution or accrual of amounts relating to overseas assignments which may be attributed predominantly to such assignments. However, a registrant should not apply the above standards mechanically; consideration should be given to the question of whether a person's level of executive responsibilities, viewed in conjunction with his or her actual level of remuneration, would give rise to a conclusion that he or she may be among the five most highly compensated, key policy-making executive officers or directors.

While the criteria set forth in the preceding paragraph may be used to determine which of the executive officers or directors shall be named in the table, the Division does not agree that the same standards should be used as a basis for deleting such amounts from the Remuneration Table. Thus, while the above standards might allow a particular person not to be one of those individually named, if such person is included as a member of the group, all relevant amounts should be reflected in the table with no exclusions based on the above standards. Moreover, if a person is named in the table, the full amount of that person's remuneration should be included in the Remuneration Table in accord with the instructions of Item 4(a). It is, of course, permissible to provide further disclosure designed to indicate amounts which merely equalize the pay of certain persons based on overseas assignments; see instruction 5 to Item 4(a).

If the registrant does use the above criteria as a basis for not naming an individual in the Remuneration Table, the Division requests that the registrant so advise the staff in its transmittal letter and describe briefly the nature and amounts which were not included in determining who should be named.

Defined Benefit or Similar Pension Plans

You have also inquired as to the method of disclosing amounts relating to a defined benefit plan, or similar pension plan. Since many pension plans involve arrangements in which the "distribution of such (pension) remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events," the instructions which specifically address such plans appear in the rules as instructions to Column D.³ However, it should be noted that certain defined or similar actuarial plans may involve arrangements to which the above condition does not apply and, instead, there is accrued or distributed for the account of the participant a cash or cash-equivalent amount. In the latter situation, instruction 2, which pertains to Column C, would govern and the relevant amount reflecting the contribution for the year should be included in Column C-2.

The above statements address those situations in which an amount pertaining to a pension plan is included in the Remuneration Table. However, you have also inquired as to the manner of disclosure concerning those plans for which such amounts are not reflected in the Remuneration Table. Instruction 3(a)(i) states that in the case of a

defined benefit or actuarial plan, if the "amount of the contribution, payment or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan" then such amounts may be omitted from the Remuneration Table provided a footnote is included disclosing that such amounts have been excluded, indicating the percentage which the aggregate contributions to the plan bears to the total covered remuneration of the plan participants, and briefly describing the remuneration covered by the plan.

If amounts are excluded from the table pursuant to instruction 3(a)(i) and described in the footnote called for by instruction 3(a)(ii), Item 4(b) requires that a separate pension plan table be included showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications. The pension plan table is required only when amounts are excluded from the Remuneration Table pursuant to instructions 3(a)(i) and (ii) to Item 4(a) and need not include information with respect to specific individuals named in the Remuneration Table.

I hope that this information is responsive to your questions.

Dear Mr. X:

In your letters dated January 3, 1979, and February 1, 1979 you requested our interpretation of several matters regarding the disclosure of management remuneration (Item 4, Regulation S-K). Your letter states that during the Company's last fiscal year an executive officer of the Company retired and, while terminating his services as employee and officer, is continuing to serve as a Director (the "Director").

The Company for a number of years has maintained a Retirement Plan and a Savings Plan, and the Director in question has been a participant thereunder since the plans' inception. In prior years, the Retirement Plan was funded by Company and employee contributions; presently the plan is funded exclusively by Company contributions. With respect to the Savings Plan, employees may contribute a percentage of their base salary to any one or a number of the funds provided by the plan, and these contributions are matched by the Company. In past proxy statements, the Company has disclosed for the Retirement Plan the estimated annual benefits on retirement for the Director in question assuming continued employment at his then-existing salary level until normal retirement date. As to the Savings Plan, prior proxy statements have disclosed the amount contributed by the Company to the account of the Director for the specific fiscal year, as well as the aggregate contributions made to the Director's account since the inception of the Savings Plan.

On retirement in 1978, the Director elected to take lump sum payments pursuant to special provisions of both the Retirement and Savings Plans. The amount of the lump sum payment under the Retirement Plan was actuarially computed and represented the current value of the normal retirement benefits under this plan. On the other hand, the lump sum payment distributed pursuant to the Savings Plan represented the net asset balance comprised of contributions made by both the Director and the regis-

trant, as well as income and gains which had accrued during prior years. The lump sum payments were not distributed directly from Company funds, but rather were payments from the trust funds established under each plan and administered by the bank which served as independent trustee.

Relevant Provisions of New Rules

Under new Item 4(a), a registrant is required to furnish a remuneration table (the "Remuneration Table") disclosing remuneration for certain specified "persons and groups for services in all capacities to the registrant and its subsidiaries, during the registrant's last fiscal year, or in specified instances, certain prior fiscal years." (Emphasis added.) Moreover, instruction 2 to Column C-2 provides in pertinent part: Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan, or arrangement previously included in the remuneration table for a prior fiscal year. (Emphasis added.)

Instructions 3(a)(i) and (ii) state that in the case of a defined benefit or actuarial plan, if the "amount of the contribution, payment or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan" then such amounts may be omitted from the Remuneration Table provided a footnote is included disclosing that such amounts have been excluded, indicating the percentage which the aggregate contributions to the plan bears to the total covered remuneration of plan participants, and briefly describing the remuneration covered by the plan.

If amounts are so excluded from the Remuneration Table, Item 4(b) requires that a separate table (the "Pension Plan Table") be included showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications. The Pension Plan Table is required only when amounts are excluded from the Remuneration Table pursuant to instructions 3(a)(i) and (ii) to Item 4(a).

The Retirement Plan

Based on the statement in your letters, it appears the Retirement Plan would be regarded as a defined benefit plan and, as outlined above, amounts relating to contributions to the Retirement Plan may be omitted from the Remuneration Table, provided a footnote to the table reflects the percentage described above. In this situation, the Pension Plan Table should also be provided pursuant to Item 4(b).⁴

Based on the information submitted in your letter, the Division will not object if the retirement benefits distributed from the Retirement Plan to the Director are not included in the Remuneration Table. The new rules, as well as the old, recognize that as to defined benefit and similar actuarial plans the contributions cannot be allocated for the account of a particular person. The Division believes that this concept may be applied to distributions, regardless of whether the distribution is in a lump sum or periodic installment, since distributions from such

³Column D is captioned "aggregate of contingent forms of remuneration," and the instruction which describes defined benefit plans is instruction 3(a).

⁴In the Division's view, this exclusion may be relied upon even though the plan in question has no regular actuary.

⁵Although it is no longer required that an individual's estimated annual benefits upon retirement be disclosed, no objection would be made if such estimates also are disclosed.

plans also present problems in separating company contributions from portfolio performance, employee contributions, or actuarial adjustments.

The Savings Plan

The criteria governing disclosure related to the Savings Plan differ between contributions and distributions. With respect to contributions, the current rules require that Company contributions made, accrued, or expensed during the latest year be included in the Remuneration Table in Column C2 if the amounts are vested, or in Column D if the amounts are contingent; it is a factual determination as to the appropriate column in which the amount should be included.⁶ Of course, only amounts contributed by the Company should be so included since the amounts shown in the Remuneration Table for salaries should be net of employee contributions to the plan.

As to distributions from the Savings Plan, the appropriate disclosure for 1978 and subsequent years depends, in part, on the manner in which contributions to the plan have previously been disclosed. As noted above, the Company's proxy statements for years prior to 1978 disclosed, as to the Director, the Company's current annual contributions to the plan, and the aggregate of all previous contributions for his account.

Generally, the instructions to Item 4(a) require distributions from a plan similar to the Savings Plan to be included in the Remuneration Table, and to be reflected in Column C, since no future contingencies as to amount or vesting exist. However, Instruction 2 to Item 4(a) permits the registrant to exclude from the Remuneration Table amounts relating to the same plan previously included in the table for a prior fiscal year. In the Division's view, the concept embodied in Instruction 2 may be applied to distributions from the Savings Plan to the Director and permit the exclusion of all contributions for the account of the Director disclosed in prior proxy statements in the manner described above. Also, the Division would not object if the same concept is applied to exclude any amounts not disclosed in prior proxy statements due to the fact that the employee/participant, at such earlier time, was not in the Remuneration Table either as a named individual or a member of the group.

Applying the above concepts to the 1978 lump sum distribution from the Savings Plan to the Director, based on your representations that all Company contributions to the Savings Plan for the account of the Director were disclosed in prior years' proxy statements in the manner described above, the only amounts which need be disclosed for 1978 would be the Company's contribution to the Savings Plan for that year. This amount should be included in Column C2, or another subcolumn appearing under Column C.

⁶Instruction 3 to Item 4(a) relating to Column D states that this column is intended to include amounts "if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events." On the other hand, Column C is intended to encompass all cash and cash-equivalent forms of remuneration.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 22, 1979.

[FR Doc. 79-8247 Filed 3-16-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

[Docket No. RM79-11]

PART 35—FILING OF RATE SCHEDULES

Change in Notice Requirements

JANUARY 2, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations under the Federal Power Act to require that changes in existing rate schedules and initial rate schedules be filed not less than sixty days or more than one hundred-twenty days before the change is to become effective. The change is required by the Public Utility Regulatory Policies Act of 1978.

EFFECTIVE DATE: January 2, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Reference Docket No. RM79-11).

FOR FURTHER INFORMATION CONTACT:

John O'Sullivan, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 275-4224.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (the Commission) gives notice of amendments to §§ 35.2 and 35.3 relating to the filing of rate schedules and notification of filing deficiencies. Prior to these amendments, § 35.3 required that changes in existing rate schedules and initial rate schedules be filed not less than thirty days nor more than ninety days before the change was to become effective. This amendment changes the filing period to not less than sixty days nor more than one hundred-twenty days before the change is to become effective. In addition, paragraph (b) of § 35.3 is

changed so that rate schedules based on the construction of facilities may be filed no earlier than one hundred-twenty days before they are to become effective. Section 35.2(c) required the Director of the Office of Electric Power Regulation to notify the filing utility of any deficiency in the filing within thirty days of its filing. This amendment changes the notification period to sixty days.

BACKGROUND

Section 207(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA) Pub. L. 95-1750, amends section 205(d) of the Federal Power Act (16 U.S.C. 824(d)) so as to replace the word "thirty", wherever it appears, with the word "sixty". As amended, section 205(d) reads:

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rates, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. (49 Stat. 851-852; 16 U.S.C. 824(d))

As paragraph (a) of § 35.3 read prior to the amendment, all rate schedules or any part thereof were to be tendered for filing with the Commission and posted not less than thirty nor more than ninety days prior to the date on which the rate or service was to become effective. The regulation established a sixty-day period within which new or amended rate schedules were to be tendered to the Commission. In order to conform § 35.3 to section 205(d) of the Federal Power Act, as amended, and preserve the sixty-day filing period, the Commission will amend its regulations so that initial rate schedules and changes in rate schedules shall be tendered not less than sixty (as provided by the statutory amendment) nor more than one hundred-twenty days prior to the date on which the schedule or the change in rates or conditions of service shall become effective. The change from ninety to one hundred-twenty days will simply preserve the sixty-day period within which filings may be made.

The amendment to paragraph (b) of § 35.3 changes the date on which rate schedules predicated on the construction of facilities may be filed. Such a

rate schedule may now be filed one hundred-twenty days before it is to become effective. Previously the date was ninety days before the schedule was to become effective.

The amendment to paragraph (c) of § 35.2 extends the period in which the Director of the Office of Electric Power Regulation may notify a filing utility of any deficiencies in the filing. The period is extended from ninety days to one hundred-twenty days.

The Commission hereby adopts and makes effective these amendments without prior notice and opportunity of comment and without publication thirty days before their effective date. The amendment changing the filing date from no less than thirty to no less than sixty days prior to the date a rate schedule change is to become effective is required by statute (section 207(a) of (PURPA), is procedural in nature, and became effective along with the other provisions of PURPA on November 9, 1978. The other amendments merely conform related provisions of the regulations to the change mandated by PURPA and are procedural in nature as well. Section 553 of the Administrative Procedure Act (5 U.S.C. 553) does not require prior notice and opportunity to comment or publication thirty days before the effective date for procedural rules.

(Federal Power Act, as amended (16 U.S.C. 284(d)); Public Utility Regulatory Policies Act of 1978, Pub. L. 95-1150; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267)

In consideration of the foregoing the Commission hereby amends Part 35, Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective immediately.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

§ 35.2 [Amended]

1. Section 35.2 is amended in paragraph (c) by deleting "30" and inserting in lieu thereof "60".

2. Section 35.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 35.3 Notice requirements.

(a) *Rate schedules.* All rate schedules or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation, or contract effective as a change in rate schedule, except as provided in para-

graph (b) of this section, or unless a different period of time is permitted by the Commission. Nothing herein shall be construed as in any way precluding a public utility from entering into agreements which, under this section, may not be filed at the time of execution thereof by reason of the aforementioned sixty to one hundred-twenty day prior filing requirements. The proposed effective date of any rate schedule filing having a "filing date" in accordance with § 35.2(c) may be deferred at the written request of the filing public utility submitted to the Secretary prior to its acceptance by the Commission.

(b) *Construction of facilities.* Rate schedules predicated on the construction of facilities may be tendered for filing and posted no more than one hundred-twenty days prior to the date set by the parties for the contract to go into effect. The Commission, upon request, may permit a rate schedule or part thereof to be tendered for filing and posted more than one hundred-twenty days before it is to become effective.

[FR Doc. 79-8205 Filed 3-16-79; 8:45 am]

[8230-01-M]

Title 22—Foreign Relations

CHAPTER V—INTERNATIONAL COMMUNICATION AGENCY

DELEGATIONS OF AUTHORITY, ORGANIZATION, AND PRIVACY

Miscellaneous Amendments

AGENCY: International Communication Agency.

ACTION: Final rule.

SUMMARY: The International Communication Agency amends its regulations relating to delegations of authority, organization, and privacy. The amendments will update the regulations to reflect organizational changes resulting from Reorganization Plan No. 2 of 1977 (42 FR 62461, December 13, 1977) which transferred certain functions to the Agency.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Jane S. Grymes, Management Analyst, Management Analysis/Regulations Staff, Associate Directorate for Management, International Communication Agency, Washington, D.C., AC 202-523-4308.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of the Director of the International Communication Agency set forth in Reorganiza-

tion Plan No. 2 of 1977, 22 CFR, Chapter V is amended as follows:

PART 502—WORLD-WIDE FREE FLOW (EXPORT—IMPORT) OF AUDIO VISUAL MATERIALS

1. In § 502.2, the last sentence of paragraph (b) is redesignated (c) and should read as follows:

§ 502.2 Implementing statute and executive order.

(c) This authority has been transferred to the International Communication Agency by Executive Order 12048, dated March 27, 1978.

§ 502.3 [Amended]

2. Section 502.3(g) is amended by the deletion of subparagraph (2) in its entirety and subparagraphs (3) and (4) are renumbered (2) and (3).

3. In § 502.3(i), the first sentence is revised to read as follows:

(i) Upon certification, the Applicant will receive the original Certificate and three signed copies. * * *

§ 502.4 [Amended]

4. Section 502.4(b). Delete the words "Post Office Department" and insert the words "U.S. Postal Service" and delete the words "Atomic Energy Commission" and insert the words "Department of Energy."

§ 502.5 [Amended]

5. Section 502.5(b). Review Board for the International Audio-Visual Program office symbol has been changed from (PGM/TA) to (PGM/TR).

6. In § 502.6(b)(4), the second sentence is revised to read as follows:

§ 502.6 Substantive criteria.

(b) * * *

(4) * * * However, the Agency does not certify or authenticate materials the purpose or effect of which is to stimulate the use of a special process or products, to advertise a particular organization or individual, or to raise funds. * * *

7. In § 502.7(c), the last sentence is revised to read as follows:

§ 502.7 History and background [Amended]

(c) * * * Although delayed in ratification and in the passage of implementing legislation, the U.S.A. became

a full partner in Beirut on January 12, 1967, permitting imports under foreign certificate to move in duty-free for the first time.

8. In § 502.7(d), the first three sentences are revised to read as follows:

(d) On August 1, 1953, with the creation of the United States Information Agency (USIA), this attestation program was transferred to USIA, where it continued without interruption. On April 1, 1978, this program was again transferred, this time to the International Communication Agency. As of December 31, 1978, the U.S. Government had issued over 55,000 certificates covering an estimated 500,000 items of visual and auditory materials (a number of the certificates cover a series of items), and over 4,000 different Applicants had submitted materials for export certification. * * *

9. In § 502.7(e)(1), the list of Beirut program countries is revised to read as follows:

United States of America	Lebanon
Brazil	Libya
Canada	Madagascar
Costa Rica	Malawi
Cuba	Malta
Cyprus	Morocco
Denmark	Niger
El Salvador	Norway
Ghana	Pakistan
Greece	Philippines
Haiti	Peoples Republic of the Congo
Iran	Syria
Iraq	Trinidad and Tobago
Jordan	Yugoslavia
Khmer Republic	

10. In § 502.7(e)(2), the list of countries informally participating is revised to read as follows:

Afghanistan	New Zealand
Belgium	Nicaragua
Bermuda	Nigeria
Dominican Republic	Panama
Ecuador	Peru
Finland	Rhodesia
Gibraltar	Spain (limited)
Guatemala	Sri Lanka
Guyana	Surinam
India	Sweden
Ireland	Uruguay
Kuwait	* * * People on Taiwan
Liberia	
Netherlands	

11. In 502.8(e), delete the words "Post Office Department" and insert the words "U.S. Postal Service."

PART 504—ORGANIZATION

§ 504.2 [Amended]

12. In § 504.2 (c), the last sentence is revised to read as follows:

(c) * * * The International Communication Agency operates field posts in 125 foreign countries.

13. Section 504.2 (d) (1) (i). The first three sentences are revised to read as follows:

(d) * * *
(1) * * *
(i) The Associate Directorate for Broadcasting (the Voice of America) is the global radio network of the International Communication Agency which seeks to promote understanding abroad of the United States, its people, culture, and policies. VOA conducts its operations in accordance with the VOA Charter, which states:

(1) VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.

(2) VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.

(3) VOA will present the policies of the United States clearly and effectively, and will also present responsible discussion and opinion of these policies.

VOA produces and broadcasts radio programs in English and 37 foreign languages, and operates broadcasting and relay facilities to transmit these programs. * * *

14. Section 504.2 (d) (1) (ii) is revised to read as follows:

(d) * * *
(1) * * *
(ii) The Associate Directorate for Programs is comprised of three small specialized staffs, two foreign press centers, and five major offices and services, all reporting directly to the Associate Director. The evaluation Staff performs followup for the Agency's inspection and research activities and evaluates the extent to which media products reflect the Agency's subject priorities. The Planning and Guidance Staff provides both fast daily and in depth background guidance for operating elements of the Agency on those U.S. foreign policy issues which are susceptible to public diplomacy and on those domestic concerns which are relevant to the conduct of it, reviews program proposals of the Agency's overseas posts and Washington elements to assure that

they are consistent with agreed-upon policy and that resources are allocated in accordance with priorities, and represents USICA in interagency meetings on public affairs issues. The International Communication Policy Staff develops options and policy recommendations over the entire range of international communication policy issues for the Director of USICA and for the consideration of the U.S. Government as a whole. Foreign Press Centers in New York and Washington provide facilitative services to foreign journalists working in those cities. The Office of Program Coordination and Development coordinates the design and implementation of all Agency support for major communication projects proposed by the Agency's overseas posts or undertaken by it in response to worldwide and regional priorities set by the Director, recruits American participants for those projects, and develops a systematic aggregation of essential resource materials to guide the acquisition and production of media support for them. The Office of Research combines the functions of research, foreign media reaction reporting, and the Agency library. The three media services—Exhibits, Press and Publications, and Television and Film—are responsible for the acquisition and production of a variety of media products for use or adaptation by USICA's overseas posts. These include exhibits in various formats; a daily wireless bulletin to all posts, magazines, pamphlets, reprints, photographs, and picture stories; and motion pictures, television programs, and videotape recordings for direct viewing. The media services also operate printing plants at two overseas locations and provide facilitative services to foreign TV production teams.

15. Section 504.2 (d) (1) (iv) is revised to read as follows:

(d) * * *
(1) * * *
(iv) The Associate Directorate for Management (MGT) is made up of eight major offices. These offices are responsible for support services, i.e., administration, personnel and training, budget and fiscal services, systems technology, security, equal employment opportunity, inspections and audits.

16. Section 504.2 (d) (1) (v). The first three sentences are revised to read as follows:

(d) * * *

(1) * * *

(v) The heads of the five geographic areas are the Agency's principal advisers on all programs within countries in their respective areas. They help to formulate Agency policies and represent the Director in interagency working groups. The Area Directors (African; European; East Asian and Pacific; American Republics; and North African, Near Eastern, and South Asian) are responsible for the coordination and management of communication programs for the countries in their geographic areas. * * *

17. Section 504.2 (d) (1) (vi) is revised to read as follows:

(d) * * *

(1) * * *

(vi) The Agency maintains 205 posts abroad in 125 countries. These posts are under the supervision of the U.S. Chiefs of Mission, and with the guidance of the Director and the appropriate area office Director, conduct public information, educational exchange and cultural programs on behalf of the U.S. Government, except for commands of the Department of Defense. Each overseas office is headed by a Public Affairs Officer who is a member of the "country team" under the Chief of the U.S. Diplomatic Mission. A list of overseas offices is maintained by the Management Analysis/Regulations Staff, Room 632, 1425 K Street, NW., Washington, D.C. 20547.

18. In Section 504.2 (d) (1) (vii), the last two sentences are revised to read as follows:

(d) * * *

(1) * * *

(vii) * * * The Office represents the Agency in hearings arising from disputes on contracts, equal employment opportunity, grievances, labor disputes, and licensing. The Office secures the necessary rights clearances for the Agency's activities, recommends waivers of certain J visa restrictions, and advises on matters relating to ethical conduct and conflict of interest of Agency employees.

19. Section 504.2 (d) (1) (viii) is revised to read as follows:

(d) * * *

(1) * * *

(viii) Office of Congressional and Public Liaison (CPL). This Office is responsible for the Agency's domestic relations and contacts with the public, the Congress, and the media. It responds to questions from the American public concerning the purposes and operations of the Agency, and prepares and issues news releases on appropriate activities, policies and personnel actions. This Office also arranges for public appearances by Agency officials; organizes seminars and workshops; prepares the Agency's annual report to Congress; publishes "USICA WORLD," the Agency's monthly in-house publication; conducts public tours of the Agency exhibit at the Voice of America and of VOA studios.

20. Section 504.2 (d) (1) (ix), APPENDIX I (2) (b), delete Associate Directorate for Management-Management Analysis/Regulations Staff.

21. Section 504.2 (d) (1) (ix), APPENDIX I (2) (f), Associate Directorate for Management is revised to read as follows:

(f) Associate Directorate for Management—Office of Security, Office of Audits, Office of Inspections Management Analysis/Regulations Staff.

22. Section 504.2 (d) (1) (ix), APPENDIX I (2) (g) is deleted in its entirety.

PART 505—PRIVACY ACT POLICIES AND PROCEDURES

23. Section 505.14(f) is revised to read as follows:

§ 505.14 Specific exemptions.

(f) *Exemption for testing or examination material.* The Agency may exempt testing or examination material used to assess the qualifications of an individual for appointment or promotion in the federal service only if disclosure of the record to the individual would reveal information about the testing process which would give an individual an unfair competitive advantage.

§ 505.15 [Amended]

24. In § 505.15(a), The systems of records are revised as follows:

USICA-19—Legal Files—GC
USICA-24—Personnel Security and Integrity Records—MGT/S

25. Section 505.15(b). The systems of records are revised as follows:

USICA-19—Legal Files—GC

USICA-24—Personnel Security and Integrity Records—MGT/S

26. In § 505.15(c), the systems of records are revised as follows:

USICA-12—Employee Relations Files—MGT/P

USICA-15—Equal Employment Opportunity Complaint Files—MGT/E

USICA-16—Equal Employment Opportunity General Files—MGT/E

USICA-19—Legal Files—GC

USICA-24—Personnel Security and Integrity Records—MGT/S

USICA-30—Recruitment Records—MGT/P

27. In § 505.15(d), the systems of records are revised as follows:

USICA-12—Employee Relations Files—MGT/P

USICA-13—Employee Training Files—MGT/PT

USICA-21—Employee Master Personnel Records—MGT/P

USICA-30—Recruitment Records—MGT/P

PART 511—FEDERAL TORT CLAIMS PROCEDURE

28. Section 511.3 is revised to read as follows:

§ 511.3 Exceptions.

Claims not compensable hereunder are listed in 2680 of the Act with the exception that 2680(k) (claims arising in a foreign country) has been removed by 22 USC 1474(5).

It is the general policy of the International Communication Agency to allow time for interested parties to take part in the rulemaking process. However, these amendments are administrative in nature and were mandated by law. Therefore, the rulemaking process, involving comment and public procedure, is waived, and these amendments become effective upon publication.

Issued at Washington, D.C.

JOHN E. REINHARDT,
Director, International
Communication Agency.

[FR Doc. 79-8288 Filed 3-16-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-5253]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these com-

munities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since publication of a flood insurance map. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of Suspended Communities.

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified	Date ¹
California	Riverside	Desert Hot Springs, city of ..	060251-B	June 30, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	May 24, 1974 Oct. 22, 1976	Apr. 2, 1979
	Weld	Evans, city of ..	080182-B	July 25, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Apr. 5, 1974 Jan. 16, 1976	Do.
Do	Larimer	Unincorporated areas.....	080101-B	July 2, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Dec. 27, 1974 Mar. 11, 1977	Do.
Connecticut	New London	Ledyard, town of ..	090157-A	Aug. 22, 1973, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	May 27, 1977	Do.
Iowa	Dubuque and Jones	Cascade, city of ..	190117-C	Nov. 20, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Dec. 17, 1973 Jan. 9, 1976	Do.
Do	Jones	Monticello, city of ..	190175-B	Nov. 27, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	June 28, 1974 Jan. 9, 1976	Do.
Florida	Broward	North Lauderdale, city of ..	120049-A	July 5, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Feb. 22, 1974	Do.
Georgia	Paulding	Unincorporated areas.....	130147-A	Jan. 23, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Mar. 19, 1976	Do.
Michigan	Macomb	Fraser, city of ..	260122-B	Feb. 16, 1973, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	May 24, 1974 May 21, 1976	Do.
Minnesota	Blue Earth	Unincorporated areas.....	275231-B	Mar. 19, 1971, emergency, Nov. 24, 1972, regular, Apr. 2, 1979, suspended.	Nov. 25, 1972	Do.
Do	Carver	Carver, city of ..	275233-A	Apr. 2, 1971, emergency, Sept. 12, 1972, regular, Apr. 2, 1979, suspended.	Sept. 12, 1972	Do.
Do	Chippewa	Montevideo, city of ..	275243-A	Apr. 2, 1971, emergency, May 26, 1972, regular, Apr. 2, 1979, suspended.	May 26, 1972	Do.
Do	Roseau	Roseau, city of ..	270414-B	Apr. 26, 1974, emergency, Sept. 29, 1978, regular, Apr. 2, 1979, suspended.	Mar. 8, 1974	Do.
New Hampshire	Merrimack	Allentown, town of ..	330103-B	Sept. 3, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Apr. 5, 1974 Nov. 5, 1976	Do.

§ 1914.6 List of Suspended Communities.—Continued

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified	Date ¹
Do	do	Hooksett, town of	330115-B	Nov. 10, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Feb. 21, 1975 Apr. 15, 1977	Do.
Do	do	Pembroke, town of	330119-A	July 24, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	May 3, 1974	Do.
New Jersey	Monmouth	Brielle, borough of	340290-B	July 28, 1972, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Aug. 31, 1973 Feb. 11, 1972	Do.
New York	Allegany	Andover, village of	360022-B	Jan. 16, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	June 14, 1974 Mar. 5, 1976	Do.
Do	Westchester	Hastings-on-Hudson, village of	360913-B	Jan. 23, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Nov. 8, 1974 Oct. 3, 1975	Do.
Do	do	Pelham, village of	360925-C	Sept. 8, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	May 17, 1974 Feb. 27, 1976	Do.
Pennsylvania	Bucks	New Britain, borough of	420986-B	Dec. 6, 1973, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	July 26, 1974 June 4, 1976	Do.
Do	Perry	New Buffalo, borough of	420753-B	Feb. 5, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Aug. 16, 1974 Apr. 23, 1976	Do.
Do	Lehigh	Upper Macungie, township of	421044-C	Feb. 12, 1974, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Nov. 26, 1976 Mar. 11, 1977	Do.
South Carolina	Greenville	Greenville, city of	450091	Jan. 15, 1974, emergency, regular, Apr. 2, 1979, suspended.	June 28, 1974	Do.
Do	do	Unincorporated areas	450089	Feb. 12, 1974, emergency, regular, Apr. 2, 1979, suspended.	Nov. 19, 1976	Do.
Virginia	Pittsylvania	Hurt, town of	510219-B	June 20, 1975, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Nov. 1, 1974 Oct. 3, 1975	Do.
Wisconsin	Lincoln	Merrill, city of	555565-A	Apr. 9, 1971, emergency, July 20, 1973, regular, Apr. 2, 1979, suspended.	July 20, 1973	Do.
Do	Marathon	Mosinee, city of	555567-A	May 7, 1971, emergency, Dec. 15, 1972, regular, Apr. 2, 1979, suspended.	Dec. 16, 1973	Do.
Do	Washburn	Spooner, city of	550470-B	Nov. 21, 1973, emergency, Apr. 2, 1979, regular, Apr. 2, 1979, suspended.	Dec. 21, 1973 May 28, 1976	Do.

¹Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

In accordance with section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 8, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7880 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

**PART 1920—PROCEDURE OF MAP
AMENDMENT CORRECTION**

**Letter of Map Amendment for Mobile
County, Alabama**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of com-

munities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included Mobile County, Alabama. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Mobile County, Alabama that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not

within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION
CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh

Street, SW., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (N.F.I.P.) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 015008B, Panel 61, published on June 29, 1977 in 42 FR 33204, indicates that Lot 52, Creekwood Subdivision, Mobile County, Alabama, as recorded in Map Book 27, Page 43, in the Office of the Judge of the Probate Court of Mobile County, Alabama is within the Special Flood Hazard Area.

Map Number H & I 015008B, Panel 61 is hereby corrected to reflect that the existing structure located on the above property is not within the Special Flood Hazard Area identified on December 17, 1976. The structure is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7881 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3875]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the County of Escambia, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the County of Escambia, Florida. It has been determined by F.I.A., after acquiring additional flood information and after technical review of the Flood Insurance Rate Map for the County of Escambia, Florida that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The Map amendments listed below are in accordance with § 1920.7 (b): Map Number H & I 120080 Panel 0011A, published on February 13, 1978 in 43 FR 6070 indicates that Lots 16

through 20, 24, 25, 29 through 33, 37, and 38, Block A; Lots 1 through 3, 5 through 8, 16, 17, 19 through 28, 32 through 41, 49 through 61, 64 through 69, and Parcel 6, Block D; Lots 1 through 7, 10 through 15, 18, 19, and 20, Block E; and Lots 3 through 19, Block F, of Lake Charlene Subdivision, Escambia County, Florida, as recorded in Plat Book 9, Page Numbers 53A, 53B, 53C, and 53D, in the Office of the Comptroller, Escambia County, Florida, are within the Special Flood Hazard Area.

Map Number H & I 120080 Panel 0011A is hereby corrected to reflect that the above lots are not within the Special Flood Hazard Area identified on September 30, 1977. The lots and parcels are in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-7882 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. 3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Town of Bedford, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Town of Bedford, Massachusetts. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Bedford, Massachusetts that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a

condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 255209A Panel 04 published on June 29, 1977 in 42 FR 33215 indicates that Lot Number 20, located at 18 Evans Avenue, Bedford, Massachusetts, as recorded in Book 8179, Page 299, in the Registry of Deeds, Southern District, Middlesex County, Massachusetts, is within the Special Flood Hazard Area.

Map Number H & I 255209A Panel 04 is hereby corrected to reflect that the existing structure located on the above property is not within the Special Flood Hazard Area identified on September 7, 1973. The structure is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7883 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Town of Bedford, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final Rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Town of Bedford, Massachusetts. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Bedford, Massachusetts, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-5581 or toll-free. 800-424-8872

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, providing that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620

The map amendments listed below are in accordance with § 1920.7(b): Map Number H&T 255209A Panel 05, published on June 29, 1977 in 42 FR 33215, indicates that the property lo-

cated at 4 Madel Lane, as recorded in Book 12818, Page 558, in the Registry of Deeds, Southern District, Middlesex County, Massachusetts, is within the Special Flood Hazard Area.

Map Number H&I 255209A Panel 05 is hereby corrected to reflect that the existing structure located on the above property, is not within the Special Flood Hazard Area, identified on February 27, 1976. The structure is Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator

[FR Doc. 79-7884 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Town of Bedford, Mass.

AGENCY: Federal Insurance Administration, HUD

ACTION: Final Rule

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Town of Bedford, Massachusetts. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Bedford, Massachusetts that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant

Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (N.F.I.P.) at:

P.O. Box 34294,
Bethesda, Maryland 20034,
Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 255209A Panel 04 published on June 29, 1977 in 42 FR 33215 indicates that Lot 33, Woodmoor Acres, Bedford, Massachusetts, also known as 6 Fern Way, as recorded in Book 11212, Page End, in the Registry of Deeds, Southern District, Middlesex County, Massachusetts, is within the Special Flood Hazard Area.

Map Number H & I 255209A Panel 04 is hereby corrected to reflect that the existing structure located on the above property is not within the Special Flood Hazard Area identified on February 27, 1976. The structure is Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7885 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. 3012]

**PART 1920—PROCEDURE OF MAP
AMENDMENT CORRECTION**

**Letter of Map Amendment for the
Town of Duxbury, Mass.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Town of Duxbury, Massachusetts. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Duxbury, Massachusetts that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (N.F.I.P.) at:

P.O. Box 34294, Bethesda, Maryland 20034,
Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 250263A Panel 01 published on June 29, 1977 in 42 FR 33215 indicates that Lot 9, Duxbury

Plantation, Duxbury, Massachusetts, also known as Number 50 South River Lane, West, as recorded in Plan Book 15, Page 259, in the Plymouth County Registry of Deeds, Plymouth County, Massachusetts, is within the Special Flood Hazard Area.

Map Number H & I 250263A Panel 01 is hereby corrected to reflect that the existing structure located on the above property is not within the Special Flood Hazard Area identified on August 30, 1974. The structure is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7886 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

**PART 1920—PROCEDURE OF MAP
AMENDMENT CORRECTION**

**Letter of Map Amendment for the
City of St. Charles, Mo.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of St. Charles, Missouri. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of St. Charles, Missouri, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b); Map Number 290318 Panel 0002B, published on June 29, 1977, in 42 FR 33219, indicates that Lot 19, Willow Brook No. 1 Subdivision, St. Charles, Missouri, also known as 21 Buckingham Place, as recorded in Plat Book 10, Page 39, in the Office of the Recorder of St. Charles County, Missouri, is within the Special Flood Hazard Area.

Map Number 290318 Panel 0002B is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on March 15, 1977. The property is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: October 16, 1978.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 79-7887 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Township of Delran, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Township of Delran, New Jersey. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of Delran that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b); Map Number H & I 340094A Panel 01 published on June 29, 1977, in 42 FR 33222 indicates that certain property owned by Amico Sand and Gravel

Company, Delran Township, New Jersey, as recorded in the Deed, Deed Book 1141, Page 219, in the Office of the Clerk of Burlington County, New Jersey, is within the Special Flood Hazard Area.

Map Number H & I 340094A Panel 01 is hereby corrected to reflect that all portions of the above property that are at or above 11 feet (mean sea level) are not within the Special Flood Hazard Area identified on May 2, 1977. Those portions that are between 11 feet and 15 feet (mean sea level) are in Zone B. Those portions that are at or above 15 feet are in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,

Federal Insurance Administrator.

[FR Doc. 79-7888 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Borough of Ridgefield, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Borough of Ridgefield, New Jersey. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Ridgefield that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410. (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (N.F.I.P.) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 340065A Panel 01, published on June 29, 1977, in 42 FR 33223, indicates that Lots 6, 7, and 8, Block R, being more commonly known as 530 Edison Street, Ridgefield, New Jersey, recorded in the Deed, Book 6328, Page 420 in the Office of the Clerk of Bergen County, New Jersey, is within the Special Flood Hazard Area.

Map Number H & I 340065A Panel 01 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on March 15, 1977. The property is in Zones B and C. The existing structure on the property is in Zone B.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-7889 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the City of Tulsa, Okla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of Tulsa, Oklahoma. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-5581 or toll-free line (800) 424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 405381C Panels 50, 51, 61 and 62 published on June 29,

1977 in 42 FR 33226, indicates that Section 21, T20N, R13E, recorded as Map 21-20-13, in the Office of the Assessor, Tulsa County, Oklahoma, is partially within the Special Flood Hazard Area.

Map No. H & I 405381C Panels 50, 51, 61 and 62 are hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on July 30, 1976. The property is in Zones B and C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-7890 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Tulsa, Okla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of Tulsa, Oklahoma. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for the property as a condition of Federal or Federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or Federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b):

Map Number H & I 405381C Panel 101, published on June 29, 1977, in 42 FR 33226, indicates that Lot 10, Block 6, Lakewood Addition, at 2814 South Gary Avenue, Tulsa, Oklahoma, as recorded in Plat Number 1287, in the office of the Clerk of Tulsa, County, Oklahoma, is within the Special Flood Hazard Area.

Map Number H & I 405381C Panel 101 is hereby corrected to reflect the above property is in Zone B and is not within the Special Flood Hazard Area identified in July 30, 1976.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7891 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the City of Tulsa, Okla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of Tulsa, Oklahoma. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or toll-free line (800) 424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b): Map Number H & I 405381C Panel 142, published on June 29, 1977, in 42 FR 33226, indicates that Lot 10, Block 1, Valley South Addition Subdivision,

also known as 7505 South 70th East Avenue, Tulsa, Oklahoma, as recorded in Book 4058, Page 496, in the Office of the Clerk, Tulsa County, Oklahoma is within the Special Flood Hazard Area.

Map No. H & I 405381C Panel 142 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on July 30, 1976. The property is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-7892 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for the Town of Barrington, R.I.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (F.I.A.) published maps identifying Special Flood Hazard Areas. This list included the Town of Barrington, Rhode Island. It has been determined by F.I.A., after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Barrington, Rhode Island, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood In-

insurance, (202) 755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (N.F.I.P.) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with §1920.7 (b): Map Number H&I 445392B Panel No. 01, published on June 29, 1977, in 42 FR 33231, indicates that Lot No. 10 on Plat No. 651 entitled "Section A College Heights, Barrington, R.I., Belonging to Vito J. D'Ambrà by Waterman Eng. Co., Nov. 1967" as recorded in File 1, Pocket 11, Folder 1, in the Office of Records of Land Evidence of the Town of Barrington, Rhode Island, also known as 21 Pine Top Road, is within the Special Flood Hazard Area.

Map Number H&I 445392 B Panel No. 01 is hereby corrected to reflect that the existing structure on the above mentioned property is not within the Special Flood Hazard Area identified on October 17, 1975. The structure is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 42 FR 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7893 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Arlington, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of Arlington, Texas. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Arlington, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or toll-free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with §1920.7(b):

Map Number H & I 485454A Panel 17, published on June 29, 1977, in 42

FR 33233, indicates that Hillside Subdivision, Third Section, as recorded in Plat Volume 388, Page 115, in the Office of the Clerk of Court of Tarrant County, Texas is within the Special Flood Hazard Area.

Map No. H & I 485454A Panel 17 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on March 5, 1976. The above property is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 42 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 79-7894 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3012]

PART 1920—PROCEDURE OF MAP AMENDMENT CORRECTION

Letter of Map Amendment for Harris County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included Harris County, Texas. It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Harris County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant

Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal of Federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b); Map Number H & I 480287B Panels 84 and 88, published on June 29, 1977, in 42 FR 33203, indicates that a 19.4 acre tract of land, located west of Fondren Road and being the southwest portion of a 1842.231 acre tract of land, deeded to the Charter Associates, Inc., Harris County, Texas, as recorded in Volume 7644, Pages 31 through 45, under File Code Number C929245 and Film Code Numbers 106-23-2454 through 106-23-2468, in the office of the Clerk of the County Court, Harris County, Texas, is within the Special Flood Hazard Area.

Map Number H & I 480287B Panels 84 and 88 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on July 30, 1977. This property is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7895 Filed 3-16-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3875]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Leon Valley, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which the Federal Insurance Administration (FIA) published maps identifying Special Flood Hazard Areas. This list included the City of Leon Valley, Texas.

It has been determined by FIA, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Leon Valley, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at:

The National Flood Insurance Program, P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 1920.7(b); Map No. H&I 480042B Panel 03, published on February 13, 1978, in 43 FR 6074, indicates that Lots 15 through 25, Block 4, and Lots 15 through 20, Block 6, Canterfield Unit 4, Leon Valley, Texas, a portion of 167.5 acres recorded in Volume 5959, Pages 235 and 236, in the office of the County Clerk of Bexar County, Texas, are within the Special Flood Hazard Area.

Map No. H&I 480042B Panel 03 is hereby corrected to reflect that Lot 15, Block 4, with the exception of the northern 5 feet; Lots 16 through 19, Block 4; Lot 20, Block 4, with the exception of the rear 4 feet; Lot 21, Block 4, with the exception of the rear 7 feet; Lot 22, Block 4, with the exception of the rear 10 feet; Lot 23, Block 4, with the exception of the rear 23 feet and the southwestern 25 feet; Lot 24, Block 4, with the exception of the rear 18 feet and the northeastern 5 feet; Lot 25, Block 5, with the exception of the rear 4 feet and the southwestern building setback easement; Lot 15, Block 6, with the exception of the rear 19 feet; Lot 16, Block 6, with the exception of the rear 24 feet; Lot 17, Block 6, with the exception of the rear 22 feet; Lot 18, Block 6, with the exception of the rear 18 feet and the southwestern 25 feet; Lot 19, Block 6, with the exception of the rear 17 feet and the northeastern 2 feet; and Lot 20, Block 6, with the exception of the rear 5 feet and the building setback easement, are not within the Special Flood Hazard area identified on June 1, 1977. The above-mentioned portions of Lots 15 and 23 through 25, Block 4, and Lots 15 through 20, Block 6 are in Zone B. The remainder of the above-mentioned property is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-7896 Filed 3-16-79; 8:45 am]

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[NGR 40-3]

PART 564—NATIONAL GUARD REGULATIONS

Medical Care

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The National Guard Bureau is revising its regulations concerning medical care for members of the National Guard. A major change is the additional authority for Guardmembers to receive medical care when they are on full time training duty (FTTD) for more than 30 days. In the review of this regulation, the proponent office has updated the information and rewritten the document to improve the regulatory language for better understanding by the public.

EFFECTIVE DATE: March 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Warrant Officer Harlow W. Paul, 202-695-3084 or write: HQDA (NGB-ARS), Washington, DC 20310.

Dated: March 12, 1979.

ROBERT H. NEITZ,
Colonel, USAF,

Executive, National Guard Bureau.

Accordingly, 32 CFR 564.37 and 564.38 are revised, and §§564.39 and 564.40 are added as set forth below.

§ 564.37 Medical Care

(a) General. The definitions of medical care; policies outlining the manner, conditions, procedures, and eligibility for care; and the sources from which medical care is obtained are enumerated in AR 40-3.

(b) Elective care. Elective care in civilian medical treatment facilities or by civilian medical and dental personnel is not authorized. The medical care authorized by this regulation is limited to that necessary for the treatment of the disease or injury incurred under the conditions outlined herein.

(c) Prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and orthopedic appliances. These items will be furnished—

(1) By Army medical facilities. (i) When required in the course of treatment of a disease or injury contracted or incurred in line of duty.

(ii) When required to replace items that have been lost, damaged, or de-

stroyed while engaged in training under sections 502-505 of title 32, U.S.C., not the result of negligence or misconduct of the individual concerned.

(2) By civilian sources. (i) Under the circumstances enumerated in (1)(i) above, after approval of the United States Property and Fiscal Officer's (USPFO) of the respective States.

(ii) Under the circumstances enumerated in (1)(ii) above in the case of prosthetic devices, prosthetic dental appliances, hearing aids, orthopedic footwear, and orthopedic appliances when the unit commander determines that:

(A) Member is far removed from a Federal medical treatment facility.

(B) Lack of such device would interfere with the individual's performance of duty as a member of the ARNG.

(C) Approval must be obtained from the USPFO's of the respective States prior to replacement.

(iii) Under the circumstances enumerated in (1)(ii) above in the case of spectacles upon a determination by the unit commander that:

(A) The member is far removed from military medical treatment facility.

(B) The member has no other serviceable spectacles.

(C) Lack of a suitable pair of spectacles would interfere with the member's performance of duty as a member of the ARNG.

(D) Charges for replacement of spectacles will not exceed the rates stated in AR 40-330. Charges for replacement or repair by civilian sources over and above the allowable rates will be paid from the individual's personal funds.

(E) In cases covered by (2) (ii) and (iii) above, the unit commander will furnish a statement to support the voucher as follows:

Statement
Name _____, Rank _____,
SSN _____, while engaged in training under section *(502) *(503) *(504) *(505) of title 32, United States Code sustained the *(loss) *(damage) *(destruction) of his/her spectacles _____, description of loss, damage or destruction (type of lens and frames) not the result of misconduct or negligence on his/her part. The *(repair) *(replacement) would interfere with his/her performance of duty as a member of the Army National Guard. Date _____, signature of unit commander _____.

*Indicate applicable portions.

(F) Approval must be obtained from the USPFO of the respective State prior to repair or replacement of spectacles.

§ 564.38 For whom authorized.

(a) In line of duty. Medical care is authorized for members who incur a disease or injury in line of duty under the following circumstances:

(1) When a disease is contracted or injury is incurred while enroute to, from, or during any type of training or duty under sections 503, 504, 505, and for Guardmembers on orders for over 30 days performing duty under section 502f of title 32, U.S.C. Such training includes, but is not limited to annual training, maneuvers and field exercises, service schools, small arms meets, and FTTD under aforementioned sections.

(2) When an injury is incurred while engaged in any type of training under section 502 of title 32, U.S.C. Such training includes, but is not limited to, unit training assembly, multiple unit training assembly, and training in aerial flight, other than FTTD under 502f.

(3) While not on duty and while voluntarily participating in aerial flights in Government-owned aircraft under proper authority and incident to training. Guardmembers are authorized medical and dental care required as the result of an injury incurred in line of duty.

(4) Medical care is not authorized at Army expense for members who incur an injury while enroute to or from any type of training under section 502, except for Guardmembers ordered to perform duty for over 30 days under section 502f of Title 32, U.S.C. Line of duty investigations and authorization for any medical treatment for conditions incurred while the members were performing Reserve Enlistment Program of 1963 (REP 63) training in a Federal status, or training under Title 10, U.S.C. are the responsibility of the Army Area commander under whose jurisdiction the member was training, even though the individual may have returned to his/her National Guard status.

(b) Not in line of duty. Members who incur an injury or contract a disease during any type of training or duty under sections 502f, 503, 504, or 505 of Title 32, U.S.C., when it is determined to be not in line of duty, may be furnished medical care at Army expense during the period of training.

(c) Armory drill status. Members who incur an injury while in an armory drill status under section 502 of Title 32, U.S.C., when it is determined to be not in line of duty, may not be furnished medical care at Army expense.

§ 564.39 Medical care benefits.

(a) A member of the ARNG who incurs a disease or injury under the conditions enumerated herein is entitled to medical care, in a hospital or at his/her home, appropriate for the treatment of his/her disease or injury until the resulting disability cannot be materially improved by further medical care.

(b) If it is determined that the disease or injury was directly related to authorized activities surrounding the care of the original disease or injury, medical care may be continued in the same manner as if it had occurred during the training period.

(c) When members who incur a disease or an injury during a period of training or duty under title 32, U.S.C. 503, 504, 505, or 502f are admitted to an Army medical treatment facility, and it appears that a finding of "not in line of duty" may be appropriate, a formal line of duty investigation should be promptly conducted, and a copy of the report furnished the treatment facility. If these findings result in a "not in line of duty" determination prior to the date the training is terminated, every effort should be made to assist the hospital concerned in disposing of the patient from the hospital by the date the training is terminated or as soon thereafter as he/she becomes transportable. Medical care furnished such member after the termination of the period of training is not authorized at Army expense unless the "not in line of duty" determination is ultimately reversed. The individual may be furnished medical care at Army expense from the date the training is terminated to the date the member receives notification of this action. Medical care received subsequent to the member's receipt of such notification is not authorized at Army expense. In the event a line of duty investigation has not been made by the date the training is terminated, every effort will be made to arrive at a determination as soon thereafter as possible.

§ 564.40 Procedures for obtaining medical care.

(a) When a member of the ARNG incurs a disease or an injury, while performing training duty under sections 502-505 of title 32, U.S.C., he/she will, without delay, report the fact to his/her unit commander. Each member will be informed that it is his/her responsibility to comply with these instructions, and that failure to promptly report the occurrence of a disease or injury may result in the loss of medical benefits.

(b) Authorization for care in civilian facility. (1) An individual who desires medical or dental care in civilian medical treatment facilities at Federal expense is not authorized such care without written or verbal authorization by the Chief, National Guard Bureau or his/her designee, except in an emergency.

(2) When medical care is obtained without prior authorization, the details will be submitted to NGB-ARS as soon as practicable. The notification of medical care will be made following

the format in the appendix. The notification will be reviewed by NGB-ARS and replied to as deemed appropriate.

(c) Status while undergoing hospitalization. The ARNG status of an individual is not affected by virtue of his hospitalization. The provisions of AR 135-200 will apply. Determination of requirement for continued hospitalization will be made by the MTF commander. Paragraph (d) below will apply when a final "not in line of duty" determination has been made. Under no condition will an individual be assigned to the medical holding unit of a hospital.

(d) Disposition of hospitalized cases. When it is determined that a hospitalized ARNG member has obtained the maximum benefits from hospitalization and there is no disability remaining from the condition for which hospitalized, he/she will be returned to his/her duty station or, if none, to his/her home of record at the time of entry into the hospital.

APPENDIX

NOTIFICATION OF INJURY

DATE _____

SUBJECT: Notification of Medical Care and/or Hospitalized Beyond the End of Training Periods.

THRU: The Adjutant General State of _____

TO: NGB-ARS, Washington, D.C. 20310.

In accordance with paragraph 8, NGR 40-3, notification of medical care is furnished below:

Name: _____
 SSN: _____
 Grade: _____
 Parent unit and station: _____
 Type and inclusive dates of training: _____
 Date and place of incident: _____
 Diagnosis: _____
 LOD status: _____
 Name and distance of nearest Federal medical facility: _____
 Name and address of medical facilities utilized: _____
 Estimated cost and duration of treatment: _____
 Summary of incident: _____

Signature, Grade, and
 Title of Commanding Officer.

[FR Doc. 79-8203 Filed 3-16-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Rule.

SUMMARY: This notice announces disapproval of a portion of a New Jersey regulation which inadvertently was not disapproved in a previous rulemaking notice. This New Jersey regulation was for the control of volatile organic substances, and the portion that is now being disapproved involves the collection of gasoline vapors during loading operations. This notice also announces approval of a recodification of EPA gasoline vapor control regulations for New Jersey. Prior to this recodification it was felt that these regulations were ambiguous, disorganized, and in need of clarification. This action will clarify the intent of recent EPA rulemaking actions by simplifying the existing regulations. No substantive changes in the existing regulations are proposed.

DATES: This action becomes effective March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION:

DISAPPROVAL OF PART OF STATE REGULATION

On July 7, 1976 (41 FR 27833), the Environmental Protection Agency (EPA) took approval/disapproval action on a proposed revision to the New Jersey State Implementation Plan (SIP). The revision involved the incorporation into the SIP of a State regulation controlling volatile organic substances, "Control and Prohibition of Air Pollution by Volatile Organic Substances," New Jersey Administrative Code, Title 7, Chapter 27, Section 16.1 et seq. (N.J.A.C. 7:27-16.1 et seq.). In this action EPA found that for the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions (AQCRs), the part of the State regulation that dealt with collection of gasoline vapors displaced during the filling of gasoline delivery

vessels, Section 16.3 was not as stringent as the provisions of related EPA regulations and therefore should not be approved. The related EPA regulation is codified in 40 CFR 52.1595.

Since the State regulation, in part, was not a satisfactory replacement for the EPA regulation, the EPA regulation was modified to apply only to gasoline loading, but was not revoked. However, the July 7, 1976 FEDERAL REGISTER rulemaking inadvertently did not contain the disapproval of the State regulation as it applied to gasoline loading for the two AQCRs. Today's action corrects this oversight through an amendment to 40 CFR 52.1582, "Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide, New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Interstate Regions." This amendment states that N.J.A.C. 7:27-16.3 as it applies to gasoline loading for the two AQCRs is disapproved.

In response to provisions of the 1977 Clean Air Act Amendments, the State is considering revision to its regulation, "Control and Prohibition of Air Pollution by Volatile Organic Substances." The State intends to modify the regulation this year and EPA would expect to approve or disapprove such proposed SIP revision by July 1979. Thus, the action in this notice might be superseded by another action in July 1979.

RECODIFICATION OF REGULATIONS PERTAINING TO GASOLINE VAPOR CONTROL

In order to resolve ambiguities and to simplify existing gasoline vapor recovery regulations in the Code of Federal Regulations (CFR) pertaining to the State of New Jersey, a recodification is hereby approved. Because the regulatory scheme to control evaporative emissions of organic vapors from gasoline loading and unloading is designed to create an integrated system that prevents loss of the collected vapors and gases at all points in the gasoline distribution chain, a single regulation has been devised to cover the entire vapor control scheme. Thus, EPA is approving the combining of the provisions of sections 52.1595 and 52.1598 of the CFR into one new § 52.1595, thus revoking § 52.1598. This consolidation should make the "closed loop" mechanism that controls vapors from their creation until their disposal or recovery more understandable to the regulated parties. This action also revokes § 52.1597, as that section contained only schedules of compliance dates which had already passed; thus the immediate compliance requirements of the new vapor regulations supersede this regulation anyway.

The consolidated regulation, although considerably shorter than the

preexisting regulation, contains all of the substantive provisions of the preexisting regulation. It utilizes consistent terminology to cover both loading and unloading of gasoline, and it covers all intermediate transfers of collected gasoline vapors before they are eventually disposed of or recovered.

This proposed recodification is mostly in the form of a reorganization and clarification of existing regulations. As such, no public hearing was necessary before approval action. However, a 30 day public comment period did follow publication of the proposed rulemaking notice for this action in the November 21, 1978 issue of the FEDERAL REGISTER (43 FR 54269). No comments were received. A detailed description of the recodification and all other changes was provided in the proposed rulemaking notice.

In consideration of the foregoing EPA has found these revisions to the New Jersey State Implementation Plan consistent with the requirements of Section 110 of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly EPA approves this revision. Furthermore, this action is being made effective immediately because the revision imposes no hardship on the affected sources.

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator, Environmental
Protection Agency.

(Section 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1582 is amended by adding new paragraph (c) as follows:

§ 52.1582 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide, New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Interstate Regions.

(c) Subchapter 16 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," N.J.A.C. 7:27-16.1 et seq., is approved for the entire State of New Jersey, with the following provisions:

(1) Section 7:27-16.3, entitled "Transfer Operations" is disapproved as it relates to the transfer of gasoline in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions. Section 52.1595 of

this Part, relating to gasoline loading, unloading and transfer is applicable in the two above-cited regions.

(2) Section 7:27-16.3, entitled "Transfer Operations" is approved as it relates to the transfer of gasoline in the New Jersey Intrastate AQCR and the New Jersey portion of the Northeast Pennsylvania AQCR, and is approved as it relates to the transfer of non-gasoline volatile organics in the entire State of New Jersey.

2. Section 52.1595 is revised as follows:

§ 52.1595 Gasoline loading, unloading and transfer.

(a) Definitions:

(1) "Gasoline" means any petroleum distillate used as a fuel for internal combustion engines and having a Reid vapor pressure of 4.0 pounds per square inch or greater.

(2) "Vapor collection system" means a system which will collect no less than 90 percent by weight of vapors and gases of organic compounds discharged during any gasoline loading or unloading operation so as to reduce their emissions to the atmosphere.

(3) "Vapor recovery-disposal system" means a system of processing vapors and gases of organic compounds discharged during gasoline loading or unloading operations. This system shall consist of one of the following:

(i) A refrigeration-condensation system, adsorption-absorption system, or the equivalent that processes all vapors and gases and ultimately converts no less than 90 percent by weight of the processed vapors and gases back to liquid product, or

(ii) A vapor handling system that directs all vapors and gases to a fuel gas system, which will dispose of no less than 90 percent by weight of the processed vapors and gases, or

(iii) Other equipment of an efficiency equal to or greater than subparagraphs (i) and (ii) of this paragraph, if approved by the Administrator.

(4) "Gasoline terminal" means a facility for the storage and dispensing of gasoline where incoming gasoline loads are received by pipeline, marine tanker or barge, and where outgoing gasoline loads are transferred by tank trucks, trailers, railroad cars, or other non-marine mobile vessels.

(5) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, railroad cars, or other mobile non-marine vessels for both incoming and outgoing gasoline transfer operations.

(b) This section is applicable in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions.

(c) *Gasoline loading.* (1) No person shall load gasoline into any truck, trailer, railroad tank car or other mobile non-marine vessel from any gasoline terminal unless the gasoline terminal is equipped with a vapor recovery-disposal system, and unless all displaced vapors and gases of organic compounds discharged during the loading operation are vented only to the vapor recovery-disposal system. Measures shall be taken to prevent liquid drainage before the loading device is disconnected.

(2) No person shall load gasoline into any tank truck, trailer, railroad tank car or other mobile non-marine vessel from any bulk gasoline plant unless the bulk gasoline plant is equipped with a vapor collection system, and unless no less than 90 percent by weight of vapors and gases of organic compounds discharged during the loading operation are vented to this vapor collection system. Measures shall be taken to prevent liquid drainage before the loading device is disconnected.

(i) All vapors and gases collected in the vapor collection system shall be directed to a vapor recovery-disposal system.

(ii) All intermediate transfers necessary to direct the vapors and gases in a vapor collection system to a vapor recovery-disposal system shall be accomplished so as to prevent the release of at least 90 percent by weight of these vapors and gases to the atmosphere during each transfer.

(d) *Gasoline unloading.* No person shall transfer gasoline nor cause or allow gasoline to be transferred from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors and gases from the storage container are collected and directed to a vapor collection system or a vapor recovery-disposal system. The collection procedure from the stationary storage container shall prevent the release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors and gases displaced from the stationary container location. The provisions of this paragraph shall not apply to deliveries made to and storage in the exempted storage containers in paragraph (g).

(1) The collection of displaced vapors and gases shall be accomplished utilizing the following equipment:

(i) A vapor-tight return line from the storage container to the delivery vessel, and

(ii) A system that will ensure that no gasoline can be transferred into the

container unless the vapor return line is connected.

(2) If a vapor collection system is used:

(i) All vapors and gases collected in the vapor collection system shall be directed to a vapor recovery-disposal system.

(ii) All intermediate transfers necessary to direct the vapors and gases in a vapor collection system to a vapor recovery-disposal system shall be accomplished so as to prevent the release of no less than 90 percent by weight of these vapors and gases to the atmosphere during each transfer.

(e) *Gasoline storage.* No person shall store gasoline in any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and equipment which will permit no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any gasoline transfer to be collected and directed to a vapor collection system or a vapor recovery-disposal system. The provisions of this paragraph shall not apply to deliveries made to and storage in the exempted storage containers in paragraph (g).

(f) *Gasoline delivery vessels.* Any tank truck, trailer, railroad tank car or other non-marine delivery vessel used to transport gasoline or gasoline vapors and gases shall be subject to the following conditions:

(1) The delivery vessel shall be equipped so as to permit it to receive vapors and gases directed to it during any gasoline unloading operations, at facilities subject to this regulation, and to permit it to direct collected vapors and gases to a vapor collection or vapor recovery-disposal system during any loading operation.

(2) The delivery vessel shall be equipped so as to be compatible with the vapor control equipment at all non-exempt facilities utilized or serviced by the delivery vessel during gasoline loading or unloading operations.

(3) The delivery vessel must be so designed and maintained as to be vapor-tight at all times except for pressure relief under emergency conditions.

(4) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor collection system and/or vapor recovery-disposal system, and such system shall be utilized during any refilling operation.

(g) *Exempted storage containers.* Gasoline deliveries made to and storage in the following are classified as exempt:

(1) Stationary containers having a capacity of 550 gallons or less which are used exclusively for the fueling of implements of husbandry.

(2) Any container installed prior to November 13, 1973 and having a capacity less than 2000 gallons.

(3) Storage tanks equipped with floating roofs or their equivalent.

NOTE.—All compliance dates and compliance schedules that previously appeared in § 52.1597 and § 52.1598 have been removed since all listed dates have passed.

§ 52.1597 [Reserved]

3. Section 52.1597 is revoked and reserved.

§ 52.1598 [Reserved]

4. Section 52.1598 is revoked and reserved.

(Sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

[FR Doc. 79-8259 Filed 3-16-79; 8:45 am]

[6560-01-M]

SUBCHAPTER C—AIR PROGRAMS

[FRL 1076-3]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking responds to comments and makes necessary amendments to the designations of attainment status relative to the National Ambient Air Quality Standards (NAAQS) for Arizona, California, Nevada, Hawaii and Guam. This rulemaking supplements the national EPA rulemaking of September 11, 1978 (43 FR 40412), and incorporates by reference EPA's position on certain general issues presented in that rulemaking. In addition to this rulemaking, a notice of proposed rulemaking is being prepared for certain Region IX designations that EPA is proposing to change to nonattainment.

DATES: Effective immediately.

ADDRESS: Comments on this rulemaking should be directed to: Arnold Den, Chief, Air Technical Branch, EPA Region IX, 215 Fremont Street (A-4), San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT:

Charlotte Hopper, Acting Chief, Technical Analysis Section, EPA Region IX, Phone: (415) 556-2002.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 (the 1977 Amendments), Pub. L. 95-95, added Section 107(d) to the Clean Air Act (the Act) which directed

each State to submit to the Administrator a list of the NAAQS attainment status of all areas within the State. The Administrator was required under Section 107(d)(2) to promulgate the State lists, with any necessary modifications. For each NAAQS, areas are classified as either not attaining the standard or, for certain pollutants, projected not to maintain the standard (nonattainment areas), meeting the standard (attainment areas), or lacking sufficient data or information to be classified (unclassified areas). The U.S. Environmental Protection Agency (EPA or the Agency) published these lists in the *FEDERAL REGISTER* on March 3, 1978 (43 FR 8962) and invited the public to submit comments to the Agency by May 2, 1978.

EPA Region IX received numerous comments on the March 3, 1978 rulemaking, particularly concerning California designations. Consequently, EPA asked the State of California Air Resources Board (ARB) to review and respond to these comments. The comments and the State's responses to them were made available for public inspection because of the public interest and further comments on all these materials were solicited by EPA for 30 days (43 FR 39101, September 1, 1978).

Certain issues raised in these comments were similar to those raised by others throughout the nation. These issues were addressed in the EPA national rulemaking of September 11, 1978 (43 FR 40412), and include the following:

- (1) The impact of designations on individual sources;
- (2) The State determination of geographic boundaries for designation purposes;
- (3) The effect of designations on new source review (NSR) and prevention of significant deterioration (PSD) requirements;
- (4) The use of projected future violations for nonattainment designation purposes;
- (5) The adequacy of TSP monitoring sites;
- (6) The EPA procedures in promulgating March 3, 1978 designations; and
- (7) The State procedures in determining attainment status designations.

The discussion of these issues in the national rulemaking is incorporated here by reference. Additional issues which are specific to the states in EPA Region IX are addressed in this action. Based on the information provided by several commenters, EPA is revising certain designations to unclassified or attainment. In a separate notice of proposed rulemaking, EPA is proposing to revise certain other Region IX designations to nonattainment and public comments are being solicited.

On January 26, 1979, EPA established a new NAAQS for ozone of 0.12

ppm (primary and secondary) to replace the photochemical oxidant standard of 0.08 ppm. Because of this change, some areas designated as nonattainment with respect to the oxidant standard will become candidates for redesignation as attainment areas by the States. Region IX will review the status of specific areas at the request of interested state and local governments to determine whether they should be attainment areas under the new standard. Any changes to the designations which are currently in effect and those which are promulgated here will be published in a future *FEDERAL REGISTER*.

For good cause, the designations revised by this rulemaking are effective immediately. As discussed in the EPA national rulemaking, the primary purpose of these designations is to identify problem areas for which State planning must be completed by a statutory deadline. These designations impose no obligation on any source. There would therefore be no point in deferring the effective date. The issues raised in the comments are discussed by state in the following paragraphs.

CALIFORNIA

Several commenters criticized the State of California's procedure whereby the Executive Officer of the ARB developed the attainment status designations. The ARB has certified that the Executive Officer has the authority under State law to make the designations required by Section 107(d) of the Act. Matters of alleged procedural irregularities under State law are best addressed at the State level.

One commenter suggested that violation of a NAAQS during one year may be the result of unrepresentative meteorological conditions and therefore should not result in a nonattainment designation. No specific area was cited in the comment. The State, in designating nonattainment areas, reviewed the most recent two or more years of data. In addition, EPA recognizes the possibility of unrepresentative data and, in accordance with 40 CFR 51.12(d), such data may be excluded from the determination of attainment status.

TOTAL SUSPENDED PARTICULATES (TSP)

The State of California recommended that the TSP designations of 13 areas in California be changed and provided supporting information to document their requested changes. These recommended designations are briefly discussed below:

Colusa County should be designated unclassified because the limited amount of data available recorded no violations of the TSP standards.

Marin, Napa, and San Mateo Counties and the portions of Solano and

Sonoma Counties within the San Francisco Bay Area Air Basin should be designated attainment since monitoring data indicates no TSP standard violations in these counties in recent years.

Yolo County should be designated nonattainment (secondary) since air quality data has recorded violations of secondary, but not primary, TSP standards.

Monterey County and the Air Quality Maintenance Area (AQMA) portions of Placer and Santa Barbara Counties should be designated attainment. They had been inadvertently designated nonattainment by the State because recorded data exceeded the annual average concentration "guide" (40 CFR 50.7(a)) $60 \mu\text{g}/\text{m}^3$, but not the annual standard of $75 \mu\text{g}/\text{m}^3$.

Humboldt, Tuolumne, and Sonoma (North Coast Air Basin portion) Counties should be redesignated because monitoring data used to make the original designation was later invalidated by the State. Humboldt County should be designated nonattainment (secondary) because the remaining valid data in the County recorded secondary, but not primary, standard violations. Tuolumne County should be designated unclassified because sufficient valid data is presently not available to determine the County's attainment status. Sonoma County (the North Coast Air Basin portion) should be designated attainment because the valid data recorded no violations of the TSP standards.

EPA has reviewed the supporting data for requested TSP designation changes described above and agrees with the rationale for each change. The designations are revised as recommended by the State of California.

One commenter questioned the siting of monitoring stations and the validity of the air quality data used to support the TSP nonattainment designation of Butte County. The designation was based on air quality data that recorded numerous TSP violations. EPA has reviewed the air quality data and information regarding the monitoring sites, and confirms the TSP nonattainment designation of Butte County.

SULFUR DIOXIDE (SO₂)

Several commenters questioned the SO₂ nonattainment designation of the South Coast Air Basin portion of Los Angeles County. The State of California commented that the original nonattainment designation had been based on a projection using an incomplete emission inventory. Projections based on a complete inventory indicate the SO₂ standards will continue to be maintained. EPA's review of the current and projected air quality confirms the State's conclusion and the

SO₂ designation of the South Coast Air Basin portion of Los Angeles County is revised to attainment.

Several commenters questioned the SO₂ nonattainment designations of the San Joaquin Valley Air Basin portion of Kern County. These comments were submitted by several oil companies, the Western Oil and Gas Association (WOGA), and the Kern County Air Pollution Control District. The State of California based its designation on projected SO₂ emissions growth resulting in future violations of the annual SO₂ standard. As discussed in the EPA national rulemaking, projections of future violations can provide the basis for a nonattainment designation. The projection technique used by the State is consistent with EPA estimating procedures. The State's projection of nonattainment is further supported by air quality dispersion modeling conducted for an oil company which shows future violations of the annual SO₂ standard.

The commenters questioned the State's method of projecting increased SO₂ emission levels in Kern County and claimed that new source review (NSR) and prevention of significant deterioration (PSD) requirements will result in decreased SO₂ emissions in the future. Kern County's new source review rule does not apply to new minor point sources, area or mobile sources, or existing sources. Therefore, many new or modified sources not subject to NSR or offset requirements because of the size cutoff, could become operational and create an increase in SO₂ emissions. The commenters did not provide documentation or demonstrate that the projected total SO₂ emissions would not increase, even if NSR and PSD had been considered in the projections.

In addition to both the projected and modeled future SO₂ violations, dispersion modeling shows current violations in Kern County. A recent air quality dispersion modeling study by EPA Region IX shows current violations of the annual SO₂ standard in Kern County. In addition, modeling studies submitted by WOGA show past, present, and future violations of the annual SO₂ standard.

Under Sections 171(2), and 107(d)(1) (A) through (C) of the Clean Air Act, two alternative criteria exist for designating an area as nonattainment for SO₂. Any area that currently violates the SO₂ standard, is to be designated as nonattainment, and any area where, in the State's judgment, the primary standard for SO₂ may not be maintained shall also be designated as nonattainment. Under either criteria, the nonattainment designation of Kern County is appropriate.

One comment questioned the use of air quality modeling results in designa-

ting attainment status where monitoring data is available. Section 171 of the Clean Air Act defines "nonattainment area" as an area which is shown by monitored data or which is calculated by air quality modeling to exceed any national ambient air quality standard. Thus air quality modeling is specifically authorized as a basis for determining whether an area is attaining the standards.

One commenter stated that the State should have analyzed Kern County's air quality on a subcounty basis. Section 107(d) of the Act provides that attainment status designations are to be composed of air quality control regions, or portions thereof. States may choose to impose requirements over a broader or narrower geographic region than the precise area where sources exist that contribute to particular concentrations of a pollutant. In this case, the State chose to designate nonattainment for that portion of Kern County within the San Joaquin Valley Air Basin. This area encompasses all significant SO₂ emission sources and is therefore acceptable.

Based upon a review of the available information, there is insufficient documentation to justify a change in the SO₂ nonattainment designation for the San Joaquin Valley Air Basin portion of Kern County.

CARBON MONOXIDE (CO)

The State recommended that the CO designation of Sutter County be changed to unclassified because no CO monitoring has been conducted in the County for several years. EPA agrees with the State's recommendation and designates Sutter County unclassified for CO.

Two commenters questioned the CO nonattainment designation of Contra Costa County in view of the fact that no CO violations have been recorded there in recent years. The State of California chose to designate the whole San Francisco Bay Area Air Basin, of which Contra Costa County is a part, as nonattainment for CO. This basinwide designation is acceptable under Section 107(d) of the Act since designations can be defined in terms of air quality control regions, or portions thereof. Numerous CO violations have been recorded in the Air Basin and motor vehicles account for about 85 percent of the CO emissions. Because the CO problem in the Air Basin is primarily transportation related, it needs to be addressed on a region-wide basis. The State commented that a regional planning approach has been initiated in the San Francisco Bay Area and should be continued to solve the CO problem. EPA agrees with the State's rationale and is not revising the CO nonattainment designa-

tion for the San Francisco Bay Area Air Basin, including Contra Costa County.

Commenters recommended that CO nonattainment boundaries in the Santa Barbara AQMA, Fresno and Butte Counties be reduced to either the metropolitan area or the central business district since violations had not been recorded beyond those areas. The State of California commented that CO is generally regarded as an automobile related pollution problem. Motor vehicles from outside the central city contribute to the CO problem when they travel to the central area and, therefore, efforts to develop pollutant control strategies should be for as broad a geographical area as is reasonable. EPA agrees with the State's rationale and notes again that the State has the authority under Section 107(d) to determine designation boundaries. No change in the CO nonattainment area boundaries of the Santa Barbara AQMA, Fresno County, or Butte County are being made at this time.

One commenter questioned the siting of a monitoring station and the validity of the air quality data used to support the CO nonattainment designation of Butte County. The State of California designated Butte County nonattainment on the basis of numerous violations of the 8-hour CO standard. A review of the air quality data and information regarding the monitoring station does not support a change in the nonattainment designation.

PHOTOCHEMICAL OXIDANTS (O_x)

One commenter questioned the Ox nonattainment designation for Glenn County since there is no Ox monitoring station in the County. The entire Sacramento Valley Air Basin, which includes Glenn County, was designated nonattainment by the State. The basin-wide designation was made because of the physical nature of oxidant formation and transport, the common geography and meteorology within the Valley, and because every oxidant monitor in the Valley has recorded violations of the standard.

Since Ox violations are a basinwide problem, it is reasonable to address the problem through regional air quality planning. Therefore, the Ox nonattainment designation of Glenn County is not being revised at this time.

One commenter questioned the validity of the air quality data and the monitoring stations used to support the Ox nonattainment designation of Butte County. The State of California chose to designate the entire Sacramento Valley Air Basin, which includes Butte County, as nonattainment. As previously noted, Ox violations have been recorded throughout

the Sacramento Valley Air Basin, including numerous violations in Butte County. A review of the air quality data and information regarding the monitoring stations does not support a change in the Ox nonattainment designation.

Two comments questioned the nonattainment designation of Butte County because there was less air pollution there than in other areas. Since the designation is based on measured violation of the standard and not on comparisons of relative air quality between geographic areas, no change is being considered in the Ox designation of Butte County.

NEVADA

Two commenters questioned the geographic boundaries of nonattainment areas in Nevada. The State of Nevada chose to designate areas based on air quality measurements made in certain portions of air quality control regions, which is consistent with Section 107(d) of the Act. EPA reaffirms the State's boundary designations since the State has selected these as the most reasonable planning areas.

HAWAII

TOTAL SUSPENDED PARTICULATES (TSP)

On March 3, 1978, EPA designated Maui Island and Hawaii Island as "unclassified" for TSP. The State of Hawaii commented that the designations should be attainment because no recent violations have been reported on either Island. A review of 1977 air quality data shows that the annual TSP standard is violated at Kahului, Maui Island. This information will be considered in a separate notice of proposed rulemaking. While no monitored violations have been reported on Hawaii Island in recent years, there is insufficient monitoring in the vicinity of major TSP emission sources along the Hamukua Coast to determine attainment status. Therefore, there is inadequate information to support revising the current designation. EPA reaffirms the unclassified TSP designation of Hawaii Island.

GUAM

TOTAL SUSPENDED PARTICULATES (TSP)

On March 3, 1978, EPA designated Guam nonattainment for TSP. The Government of Guam commented that the designation for the Island should not be nonattainment since the monitors recording recent violations are unduly influenced by reentrained road dust. EPA has reviewed the monitoring sites and agrees that reentrained dust may contribute to the violations. Since there is insufficient data from other monitors to determine Guam's attainment status at this time,

the Island's designation for TSP is changed to unclassified.

SULFUR DIOXIDE (SO₂)

On March 3, 1978, EPA designated Guam nonattainment for SO₂. The Government of Guam commented that the Island's designation should be attainment because there have been no violations in recent years. A review of monitoring data supports this claim. However, the Piti power plant uses a supplementary control system (SCS) which involves switching to low sulfur fuel during certain wind conditions to avoid violations of the SO₂ standards. Sections 123 and 302 of the Act do not allow standards to be met through the use of dispersion techniques, i.e., SCS. As discussed in the EPA national rulemaking of September 11, 1978, sources employing dispersion techniques in place of constant control techniques to prevent SO₂ violations are to be designated nonattainment. Therefore, no change in the SO₂ nonattainment designation of Guam is being made at this time.

ARIZONA

The attainment status designations for Arizona were prepared and promulgated by EPA on March 3, 1978 because the State did not submit its designations to EPA in time to comply with the requirements of Section 107(d) of the Act. The State subsequently submitted designations on August 15, 1978. This rulemaking will address only the State's designations concerning NO_x, CO, and oxidants. The State's designations for SO₂ and TSP are being analyzed by EPA and will be considered in a separate rulemaking.

NITROGEN DIOXIDE (NO₂)

The State of Arizona designated the whole State as "cannot be classified or better than national standards" for NO₂. Since no violations of the NO₂ standard have been recorded in Arizona, EPA concurs with the State's designation and notes that it is identical to EPA's promulgation of March 3, 1978.

CARBON MONOXIDE (CO)

The State of Arizona has designated two areas as nonattainment for CO:

- (1) That portion of Maricopa County known as the Maricopa Association of Governments (MAG) Urban Planning Area; and
- (2) That portion, within Pima County, of the area described by connecting the following geographical coordinates:

Latitude 32°38.5' N, longitude 111°24.0' W
Latitude 32°26.5' N, longitude 110°47.5' W
Latitude 32°12.5' N, longitude 110°32.5' W
Latitude 31°49.5' N, longitude 110°25.5' W
Latitude 31°42.0' N, longitude 110°50.5' W
Latitude 31°52.5' N, longitude 111°12.5' W

Latitude 32°24.5' N, longitude 111°29.0' W

Excepting Townships T11S, R11E and T12S, R11E. The State has designated the remainder of the State as "cannot be classified or better than national standards." The two nonattainment areas encompass Phoenix and Tucson where CO violations have been recorded. EPA has reviewed the CO data from Arizona and concurs with the State's designations.

One commenter recommended that the CO nonattainment area in Maricopa County be limited to major traffic corridors in Phoenix. The State of Arizona chose to designate the MAG Urban Planning Area as the CO nonattainment area. The basis for this area is that motor vehicles are the major source of CO emissions.

Much of the traffic that causes high emissions in the downtown area comes from the suburbs and outlying areas and a regional planning approach is needed to solve the CO problem. Therefore, no change is being made to the State of Arizona's designated nonattainment boundary which is the MAG Urban Planning Area.

PHOTOCHEMICAL OXIDANTS (OX)

The State of Arizona has designated the Phoenix and Tucson areas (as described above) as nonattainment for Ox. The remainder of the State has been designated as "cannot be classified or better than national standards." EPA has reviewed the air monitoring data and concurs with the State's designations.

One commenter recommended that the Ox nonattainment area in Maricopa County be limited to major traffic corridors in Phoenix. The State of Arizona chose to designate the MAG Urban Planning Area as nonattainment since oxidant is an area-wide problem which requires a regional planning approach. Limiting the designation to the major traffic corridors would not be consistent with the physical nature of oxidant formation and transport. Therefore, no change is being made to the State of Arizona's designated nonattainment boundary which is the MAG Urban Planning Area.

Two commenters recommended that nonattainment areas in Pima County should be either countywide or based on air sheds as defined by mountain peaks and the natural ridgelines between them. The State of Arizona has elected to define nonattainment boundaries in terms of townships and straight line segments between peaks. The commenter did not provide sufficient technical data to support revising the Ox nonattainment boundaries in Pima County. Therefore, no change to the State of Arizona's designated boundary is being considered at this time.

RULES AND REGULATIONS

TYPOGRAPHICAL ERROR

The State of California submitted a comment pointing out a typographical error in the March 3, 1978 rulemaking (43 FR 8974) for California CO. The designation table has been corrected to read "Los Angeles County (S.E. Desert Air Basin Portion)" instead of, in part, "S.E. Desert AQMA".

As noted in the EPA national rulemaking of September 11, 1978 (43 FR 40412), to have any designation amended, a person should submit a pe-

tion with supporting data and analysis to the State, with a copy to the EPA Region IX Office at the location given in the ADDRESS section of this rulemaking. If the person is not satisfied with the State's response to the petition, he may then petition the EPA Region IX Office to modify the current designation.

Note.—The Environmental Protection Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

AUTHORITY: Sections 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)).

Dated: March 7, 1979.

DOUGLAS M. COSTLE,
Administrator.

1. In 81.303—Arizona, the attainment status designation table for O₃, CO, and NO₂ are revised to read as follows:

§ 81.303 Arizona.

ARIZONA—O ₃		
Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Maricopa Association of Governments Urban Planning Area	X	
Tucson Area	X	
Rest of State		X

ARIZONA—CO		
Maricopa Association of Governments Urban Planning Area	X	
Tucson Area	X	
Rest of State		X

ARIZONA—NO ₂		
Whole State		X

2. In 81.305—California, the attainment status designation tables are amended as follows:

A. The tables for TSP are revised in their entirety.

B. That portion of the table for SO₂ beginning with "South Central Coast Air Basin: San Luis Obispo County"

and ending with "South Coast Basin Portion of Riverside County" is revised.

C. The table for CO beginning with "San Joaquin Valley Air Basin: Fresno County" and ending with "Sacramento Valley Air Basin: Tehama County" is revised.

D. The table for CO beginning with "Los Angeles County (Portion within S.E. Desert AQMA)" and ending with "Tahoe Air Basin" is revised.

The amended portions of the tables for 81.305—California read as set forth below:

§ 81.305 California.

CALIFORNIA—TSP				
Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
North Coast Air Basin:				
Del Norte County				X
Humboldt County		X		
Mendocino County	X			
Sonoma County (North Coast Air Basin Portion)				X
Trinity County				X
Lake County Air Basin				X
North Central Coast Air Basin				X
South Central Coast Air Basin:				
San Luis Obispo County:				
Salinas Valley-El Pomar Estrella Planning Area		X		
Non-Salinas Valley			X	
Santa Barbara County (AQMA Portion)				X
Santa Barbara County (Non-AQMA Portion):				
A. West area of north-south boundary separating Santa Ynez and Lompoc Valleys	X			
B. East area of north-south boundary separating Santa Ynez and Lompoc Valleys			X	
Ventura County:				
North of Los Padres Nat'l Forest boundaries			X	
South of Los Padres Nat'l Forest boundaries	X			
Channel Islands			X	
San Diego Air Basin:				
San Diego County (West Portion)	X			
San Diego County (East Portion)			X	
South Coast Air Basin:				
San Joaquin Valley Air Basin	X			
Sacramento Valley Air Basin:				
Sacramento County		X		
Solano County (Sacramento Valley Air Basin Portion)		X		
Yolo County		X		
Butte County	X			
Colusa County			X	
Glenn County			X	
Shasta County (Sacramento Valley Air Basin Portion)		X		
Sutter County	X			
Tehama County		X		
Yuba County		X		
Great Basin Valleys Air Basin			X	
Northeast Plateau Air Basin			X	
Los Angeles County (S.E. Desert Air Basin Portion)	X			
Riverside County (S.E. Desert AQMA Portion)	X			
San Bernardino County (S.E. Desert AQMA Portion)	X			

RULES AND REGULATIONS

16393

CALIFORNIA—TSP—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Riverside County (non-AQMA Portion).....			X	
San Bernardino (non-AQMA Portion).....			X	
Lake Tahoe Air Basin.....				X
San Francisco Bay Area Air Basin:				
Solano County (S.F. Bay Area Air Basin Portion)...				X
San Mateo County.....				X
Marin County.....				X
Napa County.....				X
Sonoma County (S.F. Bay Area Air Basin Portion)...				X
Alameda County.....	X			
Rest of State.....		X		
Mountain Counties Air Basin:				
Placer County (AQMA Portion).....				X
Placer County (excluding AQMA Portion and Lake Tahoe Portion).....				X
Amador County.....				X
Calaveras County.....				X
El Dorado County (excluding Lake Tahoe Air Basin Portion).....			X	
Mariposa County.....				X
Nevada County.....			X	
Plumas County.....			X	
Sierra County.....				X
Tuolumne County.....				X
Southeast Desert Air Basin:				
Kern County (S.E. Desert Air Basin Portion).....			X	
Imperial County.....			X	

CALIFORNIA—SO₂

South Central Coast Air Basin:				
San Luis Obispo County.....			X	
Santa Barbara County (AQMA Portion).....			X	
Santa Barbara County (non-AQMA Portion).....			X	
Ventura County.....				X
Channel Islands.....			X	
San Diego Air Basin:				
San Diego County (West Portion).....				X
San Diego County (East Portion).....				X
South Coast Air Basin:				
Los Angeles County (South Coast Air Basin Portion).....				X
Orange County.....				X
Riverside County (South Coast Air Basin Portion).....				X

CALIFORNIA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
San Joaquin Valley Air Basin:		
Fresno County.....	X	
Kern County (SJVAB Portion).....	X	
Kings County.....		X
Madera County.....		X
Merced County.....		X
San Joaquin County.....	X	
Stanislaus County.....	X	
Tulare County.....	X	
Sacramento Valley Air Basin:		
Sacramento County.....	X	
Solano County (SVAB Portion).....		X
Yolo County.....		X
Butte County.....	X	
Colusa County.....		X
Glenn County.....		X
Shasta County (SVAB Portion).....		X
Sutter County.....		X
Tehama County.....		X
Los Angeles County (S.E. Desert Air Basin Portion).....		X
Riverside County (S.E. Desert AQMA Portion).....		X
San Bernardino (non-AQMA Portion).....		X
Riverside County (non-AQMA Portion).....		X
San Bernardino (non-AQMA Portion).....		X
Lake Tahoe Air Basin.....	X	

3. In 81.353—Guam, the attainment designation table is revised.

§ 81.353 Guam.

GUAM—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Whole State.....			X	

¹ EPA designation replaces State designation.

[FR Doc. 79-8048 Filed 3-16-79; 8:45 am]

[6560-01-M]

[FRL 1062-31]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

Technical Amendment; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The action is a publication of a technical amendment to Part 86 of the Motor Vehicle Certification Regulations. The amendment corrects an error introduced into the regulations by a prior regulatory action. The amendment is described below.

DATE: This amendment is effective March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Diana Riker, U.S. EPA, MVEL, SDDB, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4453.

SUPPLEMENTARY INFORMATION: On November 14, 1978, 43 FR 52922, a change was made requiring that the exhaust gas analyzer response be within 20 to 100 percent of full scale during sampling. This change was made to ensure a high degree of accuracy while analyzing the pollutants of a vehicle during emissions tests for certification and other purposes. Manufacturers have commented that this specification would entail a great deal of work and expense creating new analyzer ranges with little increase in accuracy. EPA did not anticipate such consequences; therefore, the requirement is deleted. This matter will be studied further to determine what improvements can be made without unnecessary burdens.

By issuing the following technical amendment as a final rule, EPA is foregoing the prior issuance of a notice of proposed rule making (NPRM) and the opportunity for public comment. The issuance of a proposal and opportunity for public comment is unnecessary in this case. The amendment deletes a requirement that would have caused the manufacturers to expend considerable financial and human resources but would not have appreciably improved certification testing accuracy. For these reasons, EPA finds good cause to dispense with public comment in accordance with 5 U.S.C. § 553(b).

NOTE—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

Section 8.6140-78, Part 86, Chapter

1, Title 40 of the Code of Federal Regulations is amended to read as follows:
§ 86.140-78 Exhaust sample analysis.

(e) Measure HC, CO, CO₂, and NO_x concentration of samples.

(Sec. 206, 301(a) of the Clean Air Act, as amended (42 U.S.C. §§ 7525, 7601(a).))

[FR Doc. 79-8261 Filed 3-16-79; 8:45 am]

[6820-27-M]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

[FPMR Amendment D-701]

PART 101-17—ASSIGNMENT AND UTILIZATION OF SPACE

Subpart 101-17.1—Assignment of Space

APPEALS PROCEDURE

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation deletes the final level of appeal to the President, through the Director of the Office of Management and Budget, in those cases where an agency has disputed the assignment of space. These changes are necessary to comply with Executive Order 12072. The intent of this regulation is to inform all agencies of the deletion of this appeal procedure for resolving disputes relating to space assignment actions.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

James G. Whitlock, Director, Space Management Division, Office of Space Management, Public Buildings Service, General Services Administration, Washington, DC 20405 (202-566-1875).

Subpart 101-17.1—Assignment of Space

Section 101-17.104-4(b) is deleted and designated reserved as follows:

§ 101-17.104-4 Further appeals.

(b) [Reserved]

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: March 2, 1979.

JAY SOLOMON,
Administrator of
General Services.

[FR Doc. 79-8202 Filed 3-16-79; 8:45 am]

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEDICARE AND MEDICAID REGULATIONS

Conformance With Professional Standards Review Regulations on Review, Certification, and Payment Activities

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulation.

SUMMARY: These amendments revise a number of Medicare and Medicaid regulations to conform them to the review and certification requirements contained in final Professional Standards Review Organization (PSRO) regulations published in the FEDERAL REGISTER on February 22, 1978 (43 FR 7400-7412). The PSRO regulations established policies and procedures that provide for (1) PSRO assumption of review responsibility for determining the medical necessity, quality, and appropriateness of health services for which payment may be made under the Medicare and Medicaid programs; (2) the conclusive effect of PSRO determinations on Medicare and Medicaid claims payment; and (3) the correlation of PSRO activities to Medicare and Medicaid to preclude duplication of other review, certification, and payment activities. The amendments to the Medicare and Medicaid regulations eliminate duplicative requirements that will now be governed by the policies and procedures prescribed in the PSRO regulations. Three technical corrections are also made in the PSRO regulations.

DATES: These regulations are effective on February 22, 1978. However, we will consider any written comments received by April 18, 1979, and revise the regulations later as appropriate.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. In commenting, please refer to MAB-49-R. Comments will be available for public inspection beginning approximately 2 weeks after publication, in Room 5231 of the Department's offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202) 245-0950.

FOR FURTHER INFORMATION, CONTACT:

For Medicare regulations: Marinos Svolos, Medicare Bureau, Health Care Financing Administration, 6401 Security Boulevard, Room 106, East High Rise Building, Baltimore, Maryland 21235, 301-594-9315.

For Medicaid regulations: Patrick McCarthy, Medicaid Bureau, Health Care Financing Administration, 330 C Street, S.W., Room 4314, Switzer Building, Washington, D.C. 20201, 202-245-0514.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part B of Title XI of the Social Security Act, as amended by the "Medicare-Medicaid Anti-Fraud and Abuse Amendments" of 1977 (Pub. L. 95-142), requires Professional Standards Review Organizations (PSROs) to perform review and certification functions that duplicate or are similar to requirements in the Medicare law (Title XVIII of the Act). Section 1152(e) states that the related Medicare requirements are no longer applicable except to the extent permitted by the Secretary of Health, Education, and Welfare. Section 1158 also contains provisions affecting the manner in which payment for covered services is determined when a PSRO is performing review, and section 1165 requires the Secretary to correlate the requirements of the PSRO law and the Medicare and Medicaid programs to achieve consistent and effective administration. Regulations implementing the applicable statutory provisions of Title XI-B of the Act were published in the FEDERAL REGISTER on February 22, 1978 (43 FR 7400-7412) with an effective date also of February 22, 1978. They are codified under 42 CFR Part 463. Sections 463.26 and 463.28 of these regulations contained provisions for the correlation of PSRO functions with Medicare functions in the following areas:

(1) *Utilization review activities.* PSRO review activities under section 1155(a) of the Act will be in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), 1861(j)(8), 1861(j)(12), 1861(k) and 1865 of the Act.

(2) *Certifications.* The certifications made by attending physicians under section 1156(d) of the Act with regard to the medical necessity of health care services will be in lieu of the physician certifications required under sections 1814(a)(2) (A), (B), (C) and (E), 1814(a)(3), 1835(a)(2)(B), and 1903(g)(1)(A) of the Act. However, pertinent coverage regulations and guidelines authorized and established under those provisions of title XVIII of the

Act will continue to apply to payment determinations and the physician certifications required by section 1814(h) of the Act and 42 CFR 405.133 of the regulations for presumed coverage of post-hospital extended care services still apply.

(3) *Payment determinations by Medicare intermediaries and carriers.* PSRO determinations under section 1155(a) of the Act with regard to the medical necessity, quality and appropriate level of care of health care services will be conclusive with regard to those issues on decisions of Medicare intermediaries and carriers under sections 1814(a)(4), 1814(a)(5), 1814(a)(6), 1862(a)(1) and 1862(a)(9) of the Act. Reviews with respect to those determinations will not be conducted, for purposes of payment, by Medicare intermediaries and carriers. However, pertinent coverage regulations and guidelines authorized and established under those provisions of title XVIII of the Act will continue to apply to payment determinations, and claims payment agencies will not be precluded from rendering coverage and reimbursement determinations on issues that are not subject to PSRO determinations.

(4) *Survey, compliance and assistance activities.* PSRO review and monitoring activities will be in lieu of the survey, compliance and assistance activities required of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and intermediaries and carriers under sections 1816(b)(1)(B) and 1842(a)(2) (A) and (B) of the Act.

(5) *Review and appeals activities.* Any reviews, appeals, and notifications of PSRO determinations provided under sections 1159 (a) and (b) of the Act will be in lieu of reviews, appeals and notifications provided under sections 1842(b)(3)(C) and 1869(b) of the Act with respect to the issues of the medical necessity, quality, and appropriate level of care of health care services.

(6) *Continuation of functions.* Section 1152 of the Act states that any of the duties and functions contained in the PSRO provision which have not been assumed by a PSRO must be carried out by State agencies, fiscal intermediaries, carriers, utilization review committees, and physicians in the manner otherwise prescribed under the law and regulations. Thus, the existing Medicare and Medicaid regulations provisions remain in effect to the extent that PSROs have not assumed the review and certification functions which replace or supersede the review and certification functions they require.

REGULATORY PROVISIONS

1. REVISIONS OF MEDICARE REGULATIONS

PSRO review activities under section 1155(a) of the Act are in lieu of utilization review activities required by the Medicare regulations at 42 CFR 405.612, 405.1035 and 405.1137. PSRO review determinations are also in lieu of the utilization review committee findings with respect to the need for long-term care specified in § 405.133(a)(4). Also, physician certifications required under section 1156(d) of the Act are in lieu of the physician certifications required under §§ 405.160, 405.165, 405.250, and 405.1625. Similarly, the PSRO provisions under section 1158 of the Act, relating to payment for services following a PSRO denial, replace the requirements in §§ 405.162 and 405.166 which relate to payment following an adverse finding by a utilization review committee.

Since PSRO determinations are appealable to the PSRO under section 1159 of the Act rather than to the Medicare intermediary, § 405.704 has been revised to delete PSRO determinations as initial determinations appealable to a Medicare intermediary. Finally, § 405.678 has been amended to remove the responsibility for making medical necessity determinations from Medicare carriers when PSROs are performing review under section 1155(a) of the Act.

2. AMENDMENT TO THE MEDICAID REGULATIONS

An amendment is also being made to the regulations for the Medicaid program to make them consistent with Part 463. Because of the way the Medicaid regulations were reorganized on September 29, 1978 (43 FR 45176), this can be done more simply than is necessary for the Medicare regulations. We are merely adding a new section to the general administrative requirements in Part 431, specifying that the State plan must provide that the Medicaid agency will conform its activities to the PSRO review responsibilities specified in Part 463. This means that the PSRO activities specified in § 463.27 supersede the comparable requirements and activities of the Medicaid agency. This is particularly pertinent to the certification and utilization review activities specified in Part 456 of the Medicaid regulations. It also pertains to the activities of the State survey agencies and to the hearing provisions in 45 CFR 205.10.

3. TECHNICAL CORRECTIONS IN PART 463

The Part 463 regulations published on February 22, 1978 contained some technical errors that we are correcting as follows:

(i) Section 463.5(b) presently indicates that if a Medicaid agency, State Title V agency, or Medicare fiscal agent does not want to enter into a memorandum of understanding (MOU) with a PSRO, it should notify the PSRO. Section 1171(a)(2) of the Act, however, specifically directs the Medicaid agency to notify the Secretary if it does not want to have an MOU. We are revising section 463.5(b) to conform to the statute. In order to avoid confusion, we are having the Title V agencies also notify the Secretary, rather than the PSRO. We are also deleting Medicare fiscal agents from this provision. We believe these MOU's are valuable and there is no valid reason for Medicare fiscal agents, which are agents for HEW, not to enter into them.

(ii) Section 463.26(d) incorrectly cites section 1861(b)(1)(B) of the Act as the authority governing Medicare fiscal intermediary responsibilities regarding utilization review. The correct citation is section 1816(b)(1)(B).

(iii) Section 463.27(d), in specifying which of the State survey agency's activities are superseded by PSRO activities, was erroneously over-inclusive in citing the Act. By referring merely to section 1902(a)(33), it failed to distinguish between those responsibilities specified in section 1902(a)(33)(A) relating to utilization review, which are superseded by the PSRO functions, and the responsibilities specified in section 1902(a)(33)(B) relating to other conditions of participation, which are retained by the State survey agencies.

WAIVER OF RULEMAKING

A notice of proposed rulemaking and delayed effective date have been waived for good cause. The regulations are merely conforming amendments to make the Medicare and Medicaid regulations consistent with Part 463 and to correct technical errors in Part 463. They contain no significant policy issues and will not have any adverse effect on beneficiaries, recipients, or providers. They are being given an effective date of February 22, 1978, the same as the effective date for Part 463. The regulations will thus apply to review, certification, and payment functions performed prior to March 16, 1979, as well as those performed after such date.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. 42 CFR Part 405 is amended as set forth below:

1. Section 405.133 is amended by revising paragraph (a)(4) to read as follows:

§ 405.133 Post-hospital extended care and post-hospital home health services; presumed coverage procedure.

(a) *Eligibility for presumed coverage.* To qualify for extended care benefits upon admission to a skilled nursing facility a beneficiary must need on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services prior to transfer to the skilled nursing facility (see §§ 405.126-405.128(a)). To qualify for part A home health benefits upon admission to care by a home health agency following a qualifying inpatient stay a beneficiary must be confined to his home, under the care of a physician and must be in need of skilled nursing care on an intermittent basis, physical therapy or speech therapy (speech pathology) for a condition for which he received medically necessary inpatient hospital services or post-hospital extended care services. An individual who has a medical condition listed in paragraph (c) of this section (in the case of post-hospital extended care services) or paragraph (d) of this section (in the case of post-hospital home health services) is presumed to require this level of care for the period of time or number of visits specified for such condition provided:

(4) There is no adverse finding by the skilled nursing facility's utilization review committee or by a Professional Standards Review Organization, as appropriate, that the stay or any further stay is medically unnecessary (see §§ 405.166 and 405.1137(e) of this part and § 463.26(b)(3) of this chapter); and

2. Section 405.160 is amended by adding a new paragraph (d) to read as follows:

§ 405.160 Payment to participating hospital for inpatient hospital services; conditions for payment.

(d) *Correlation of PSRO-Medicare certification requirements.* If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for the inpatient services provided by or in the hospital, a certification made by the attending physician under section 1156(d) of the Act shall be in lieu of the physician's certifica-

tion required under paragraphs (a), (b), and (c) of this section. However, the coverage requirements of § 405.116, to which the physician would otherwise certify, continue to apply to payment determinations for the services. (See §§ 463.25, 463.26, and 463.28 for provisions concerning the correlation of functions under titles XI-B and XVIII of the Act.)

3. Section 405.162 is revised to read as follows:

§ 405.162 Prohibition against payment for inpatient hospital services furnished after utilization review finding that further services are not medically necessary.

(a) *Hospital system of utilization review.* If a finding has been made under a hospital system of utilization review (see § 405.1035) that further inpatient hospital services are not medically necessary, payment may be made only for those inpatient hospital services furnished before the fourth day following the day on which the hospital received notice of the finding.

(b) *PSRO system of review.* If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for the inpatient hospital services furnished by or in the hospital, the payment limitation described in § 463.17(a) applies to the inpatient hospital services furnished to a beneficiary and shall be in lieu of the payment limitation in paragraph (a) of this section.

4. Section 405.165 is amended by revising paragraph (b) to read as follows:

§ 405.165 Payment for post-hospital extended care services; conditions.

Payment may be made under this Subpart A for post-hospital extended care services only if:

(b)(1) When required, a physician (other than a doctor of podiatry or surgical chiropody) certifies and recertifies (see Subpart P of this part) that such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis:

(i) For any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution had met the necessary requirements relating respectively to a utilization review plan (see § 405.1035) and such other

requirements as the Secretary finds necessary in the interest of health and safety (see § 405.1001 et seq. for qualification as a "hospital") prior to transfer to the skilled nursing facility; or

(ii) For a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of any of the conditions for which he was receiving such inpatient hospital services; and

(2) If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for the post-hospital extended care services furnished by or in the skilled nursing facility, a certification made by the attending physician under section 1156(d) of the Act shall be in lieu of the physician certifications required under paragraph (b)(1) of this section. However, the coverage requirements in §§ 405.125 through 405.128a to which the physician would otherwise certify continue to apply to payment determinations for those services (see §§ 463.25, 463.26, and 463.28 for provisions concerning the correlation of PSRO-Medicare functions under titles XI-B and XVIII of the Act.); and

5. Section 405.166 is revised to read as follows:

§ 405.166 Prohibition against payment for post-hospital extended care services furnished after a utilization review finding that further services are not medically necessary.

(a) *SNF system of utilization review.* If a finding has been made under a skilled nursing facility (SNF) system of utilization review (see § 405.1137) that further post-hospital extended care services are not medically necessary, payment may be made only for those post-hospital extended care services furnished before the fourth day following the day on which the facility received notice of the finding.

(b) *PSRO system of review.* If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for the post-hospital extended care services provided by or in the skilled nursing facility, the payment limitation described in § 463.17(a) applies to the post-hospital extended care services provided to a beneficiary and shall be in lieu of the payment limitation in paragraph (a) of this section.

6. Section 405.250 is amended by revising paragraph (b)(1) to read as follows:

§ 405.250 Procedures for payment: medical and other health services furnished by a participating provider; home health services.

Payment for medical and other health services (see §§ 405.230(a)(3), 405.231, and 405.232) and for home health services (see §§ 405.230(a)(4), 405.233 through 405.236) furnished by a participating provider of services is made to such provider only if:

(b) A physician certifies, and recertifies (see Subpart P of this part) when required, that:

(1) In the case of medical and other health services (except services described in § 405.231(c), (k), and (l)), such services were medically required. (If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for the medical and other health services furnished by or in the participating provider, the certifications must be made by the attending physician under section 1156(d) of the Act in lieu of the physician certification required under this section. See §§ 463.25, 463.26, and 463.28 for provisions concerning correlations of functions under title XI and title XVIII of the Act); or

7. A new § 405.310-1 is added to read as follows:

§ 405.310-1 Nonreimbursable expenses: conclusive effect of PSRO determinations on claims payment.

If a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for items and services furnished to a beneficiary, no Federal funds appropriated under title XVIII of the Act shall be used (directly or indirectly) for the payment of any claim for those items and services unless the conditions of §§ 463.15 through 463.18 of this chapter are met.

8. Section 405.612 is amended by revising paragraph (a)(4) to read as follows:

§ 405.612 Compliance with procedural and other requirements; individual's refusal to execute request for payment.

(a) For purposes of § 405.607(a)(2), compliance with procedural and other requirements means that the provider of services:

(4) Has complied with the provisions requiring timely utilization review of

long-stay cases so that a limitation on days of services has not been imposed under section 1866(d) of the Act (see § 405.617). If review of the provider's services has been assumed by a Professional Standards Review Organization (PSRO) in accordance with the applicable provisions of Part 463 of this chapter, the provider is presumed to have complied with the applicable provision of this part.

9. Section 405.678 is amended by revising paragraph (c) to read as follows:

§ 405.678 Duties to be performed by a carrier.

A carrier which has entered into a contract with the Secretary shall:

(c) Institute utilization safeguards which include methods for professionally assuring that payments made under part B of title XVIII are for covered services which are medically necessary. If, after appropriate consultation, the carrier concludes that a service or services for which a claim has been made were not medically necessary or that the claim as presented is improper in reflecting the amount and character of services rendered, the carrier is responsible for taking appropriate action with respect to adjustment or rejection of the claim.

If review of services for which payment is claimed has been assumed by a Professional Standards Review Organization (PSRO) in accordance with the applicable provisions of Part 463 of this chapter, final determinations of medical necessity with respect to the services under review shall be made by the PSRO either directly or upon request by the carrier.

10. Section 405.704 is amended by revising paragraph (a)(11) to read as follows:

§ 405.704 Actions which are initial determinations.

(a) *Initial determinations with respect to an individual.* For purposes of this Subpart G, an initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of such individual under Part A of Medicare, including a determination with respect to:

(11) The medical necessity of services, except when the determination has been made by a Professional Standards Review Organization in accordance with the applicable provi-

sions of Part 463 of this chapter (see § 463.26(e));

11. Section 405.1035 is amended by adding a new paragraph (m) to read as follows:

§ 405.1035 Conditions of participation—utilization review plan.

(m) *Correlation of PSRO review-Medicare utilization review activities.* Review activities under section 1158(a) of the Act shall be in lieu of the requirements of this section if a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for services provided by or in the hospital to inpatients who are entitled to benefits under this Part 405. (See §§ 463.25, 463.26, and 463.28 for provisions concerning the correlation of functions under title XI-B and XVIII of the Act.)

12. Section 405.1137 is amended by adding a new paragraph (j) to read as follows:

§ 405.1137 Condition of participation—utilization review.

(j) *Correlation of PSRO review-Medicare utilization review activities.* Review activities under section 1158(a) of the Act shall be in lieu of the requirements of this section if a Professional Standards Review Organization (PSRO) has assumed review responsibility in accordance with the applicable provisions of Part 463 of this chapter for services provided by or in the facility to inpatients who are entitled to benefits under this Part 405. (See §§ 463.25, 463.26, and 463.28 for provisions concerning the correlation of functions under title XI-B and XVIII of the Act.)

13. A new § 405.1625-1 is added to read as follows:

§ 405.1625-1 Certification and recertification by physicians: applicability of requirements when Professional Standards Review Organizations perform review.

If the Secretary finds a Professional Standards Review Organization to be competent to perform review responsibilities, the physician certification provisions in sections 1814(a)(2) (A), (B), (C), and (E), 1814(a)(3), and 1835(a)(2)(B) of the Act and the applicable implementing provisions of this subpart will no longer be applicable (see section 463.26(b)). However, the certifications required under sections 1814(a)(2)(D) and 1814(h) of the Act

(see §§ 405.133, 405.170, 405.1632 and 405.1633) will continue to be necessary. All other pertinent coverage regulations and guidelines authorized and established pursuant to the provisions of title XVIII cited in this section shall continue to apply to payment determinations.

14. Section 405.1902 is amended by adding a new paragraph (d) to read as follows:

§ 405.1902 Certification-by State agency.

(d) When a Professional Standards Review Organization (PSRO) is conducting review activities under section 1155(a) of the Act, its activities shall be in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), 1861(j)(8), 1861(j)(12), 1861(k) and 1865 of the Act and will also be in lieu of survey, compliance, and assistance activities required of State survey agencies under section 1864(a) with respect to those sections. See Part 463 concerning PSRO review.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

Subpart M—Relations With Other Agencies

B. 42 CFR Part 431, Subpart M is amended by adding a new § 431.630 to read as follows:

§ 431.630 Coordination of Medicaid with Professional Standards Review Organizations.

The State plan must provide that the Medicaid agency will comply with the provisions of Part 463 of this chapter, relating to the activities of PSROs.

C. 42 CFR Part 463 is amended as follows:

PART 463—REVIEW RESPONSIBILITY AND AUTHORITY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS (PSROs)

1. Section 463.5 is amended by revising paragraph (b) to read as follows:

§ 463.5 Coordination with other agencies and agents.

(b) *Administrative procedures:* If a Medicaid or title V State agency does not wish to enter into an MOU with a PSRO, it shall promptly notify the Secretary for his consideration of a

waiver of the MOU. If the Secretary approves a waiver of the MOU:

(1) The PSRO shall develop administrative procedures that include the items specified in paragraph (a)(4) of this section.

(2) During the development of its procedures, and prior to their submission to the Secretary, the PSRO shall consult with the Medicaid or title V State agency.

§ 463.26 [Amended]

2. In § 463.26(d), the citation to "1861(b)(1)(B)" is changed to read "1816(b)(1)(B)".

3. Section 463.27 is amended by revising paragraph (d) to read as follows:

§ 436.27 Correlation of Title XI functions with Title XIX functions.

(d) *Survey and compliance activities.* PSRO review and monitoring activities shall be in lieu of the validation procedures performed by the Secretary under section 1903(g)(2) of the Act and the survey procedures required of State survey agencies under section 1902(a)(33)(A) of the Act.

(Secs. 1102, 1152(e), 1154(b), 1155(a)(1), 1158, 1164, and 1165 of the Social Security Act; 42 U.S.C. 1302, 1320c-1(e), 1320c-3(b), 1320c-4(a)(1), 1320c-7, 1320c-13, and 1320c-14.)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and 13.774, Medicare—Supplementary Medical Insurance.)

Dated: December 22, 1978.

LEONARD D. SCHAEFFER,
Administrator, Health Care
Financing Administration.

Approved: January 24, 1979.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc. 79-8254 Filed 3-16-79; 8:45 am]

[4110-92-M]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES, TITLE XX OF THE SOCIAL SECURITY ACT

Child Care Services and Services for Drug and Alcohol Abusers

AGENCY: Administration for Public Services (APS), Office of Human Development Services (HDS), Department of Health, Education, and Welfare.

ACTION: Final regulations.

SUMMARY: These regulations delete the authority for a State title XX agency (1) to provide services to drug and alcohol abusers without regard to various limitations on services affecting the rest of the title XX program; and (2) to make grants to child day care providers to employ AFDC recipients. These regulations also extend the moratorium on certain Federal child day care staffing standards that have been in effect since October 1, 1975. The standards govern adult to child staffing ratios for children ages 6 weeks to 6 years old being cared for in group day care and day care center facilities. Also extended are two other provisions regarding child day care services and staffing ratios.

The first two amendments are being made because the statutory authority for these provisions has expired.

The third amendment is being made to maintain current program requirements until the new Federal day care standards are promulgated.

EFFECTIVE DATE: These regulations were effective October 1, 1978. Although this is a final rule, comments will be accepted and any changes found necessary will be made. Consideration will be given to written comments or suggestions received on or before April 18, 1979. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Commissioner, Administration for Public Services, Department of Health, Education, and Welfare, P.O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection beginning approximately two weeks after publication, in room 2225 of the Department's offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-245-9415)

FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie U. Brooks, 202-245-9415.

GRANTS TO CHILD DAY CARE PROVIDERS TO EMPLOY AFDC RECIPIENTS

Pub. L. 94-401 gave State title XX agencies the option of making grants to out of home child day care providers to employ AFDC recipients. This authority was extended by Pub. L. 95-171. Since the statutory authority has expired, the regulations are revised accordingly. This means that no FFP is available after September 30, 1978 for grants to out of home child day care providers to employ AFDC recipients.

CONTINUATION OF THE MORATORIUM ON CERTAIN FEDERAL CHILD DAY CARE STAFFING STANDARDS

Title XX contains specific conditions for receipt of FFP for child day care services. For example, Section 2002(a)(9)(A)(ii) incorporates (with certain modifications) the Federal Interagency Day Care Requirements (FIDCR) by reference as a condition for FFP. The FIDCR cover a broad range of requirements for out-of-home care of children in various settings, e.g., family day care, group day care, and day care centers; it also specifies certain adult to child staffing ratios for the care of children. In addition, Section 2002(a)(9)(A)(ii) also authorizes the Secretary to set adult to child staffing ratios for children under age 3 being cared for in group day care homes and day care centers.

When it became clear that not all States were able to meet these staffing requirements and that withholding FFP would jeopardize the title XX day care services program in some States, a moratorium was placed on the implementation of these requirements by Pub. L. 94-120, Pub. L. 94-401, and Pub. L. 95-171. The moratorium specified that Federal staffing standards were waived for children ages 6 weeks to 6 years being cared for in group day care homes and day care centers. For additional flexibility, States were given the option to waive staffing standards in facilities where "few" title XX children were served. Also, in computing the adult to child staffing ratios, States were required to count the children of a family day care home operator only if they were under age 6. (States were free to count the children over age 6 if they wished.)

Although the specific statutory authority for the moratorium has expired, we are continuing it under the authority of Section 2002(a)(9)(A) which authorizes the Secretary to set staffing standards for the care of children under age 3 in group day care homes and day care centers, and under Section 2002(a)(9)(B), which authorizes the Secretary to issue regulations modifying the title XX day care requirements 90 days after he submits to Congress a required evaluation of the

appropriateness of the title XX day care requirements. (The Appropriateness Report was submitted to Congress July 12, 1978.) We are continuing the moratorium because the title XX day care requirements are currently under review and may be revised. We think it would be unreasonable and confusing if the States had to begin complying with these requirements as they relate to staffing standards now, and then had to change to conform to the revised requirements.

In addition, we are also continuing two other related provisions: (1) States may waive staffing standards in certain facilities where "few" title XX children receive day care; and (2) States are required to count the children of a family day care home operator, in computing the adult-child staffing ratios, only if they are under age 6.

REGULATORY AMENDMENTS

For the reasons discussed above:

1. 45 CFR 228.40, 228.41, and 228.44 are revised to remove authority to provide services to drug and alcohol abusers without regard to the limitations on medical and remedial care, room or board, or residence in an institution.

2. 45 CFR 228.42(c) is revised to show that the moratorium on certain federal child day care staffing standards and certain other related provisions are continued.

3. Subpart J, "Grants to child day care providers to employ welfare recipients", is completely eliminated from Part 228 as are other references bearing on this subject.

TECHNICAL AMENDMENTS

We are also making technical amendments to the title XX regulations to conform them to the current levels of appropriations. When title XX was enacted, a ceiling of \$2.5 billion was authorized. Public Laws 94-401 and 95-171 authorized an additional \$200 million for child day care services for FY 1977 and FY 1978. Currently, Pub. L. 95-600 authorized a ceiling of \$2.7 billion plus \$200 million for child day care services for FY 1979 only. The following technical amendments are made:

1. 45 CFR 228.51 is revised to delete the reference to FY 1977.

2. 45 CFR 228.52 is revised to stipulate a ceiling of \$2.7 billion for FY 1979, and to make the availability of the additional \$200 million applicable to the appropriate fiscal years.

GOOD CAUSE FOR WAIVING NOTICE OF PROPOSED RULEMAKING

Notice of Proposed Rulemaking and a delayed effective date are being waived for good cause, based on the compelling need to provide immediate direction to States so that their FFP

under title XX is not jeopardized by continuing programs no longer authorized.

Regarding the continuation of the moratorium on child day care staffing standards, we are revising the title XX child day care regulations and expect to issue them sometime in 1979. In the interim, we believe it would be unnecessarily disruptive to the delivery of child day care services (and impact negatively on the users who are dependent on these services) if States were required to change their day care regulations twice in a short period of time.

45 CFR Part 228 is revised as follows:

1. Section 228.29 is amended by deleting paragraph (b)(3) and renumbering as follows:

§ 228.29 Program coordination and utilization.

(b) The service plan shall contain:

(3) Information on standards established by designated standard-setting authorities for residential facilities for SSI recipients, as follows:

§ 228.40 [Amended]

2. Section 228.40 is amended by deleting paragraph (c).

§ 228.41 [Amended]

3. Section 228.41 is amended by deleting paragraph (e).

4. Section 228.42 is amended by revising paragraphs (c)(1), (c)(2) and (d) to read as follows:

§ 228.42 Child care standards.

(c) Notwithstanding the Federal staffing requirements for out-of-home child care services set forth in paragraph (a)(2)(ii)(B) of this section:

1. FFP is available after October 1, 1975 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(2)(i) After September 7, 1976, when States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may furnish day care services in a center or

group day care home which does not meet such Federal standards if the following two requirements are met:

(d) After October 1, 1975, in applying Federal staffing standards, States shall be required to count the children of the operator of a family day care home only if they are under 6 years of age.

§ 228.44 [Amended]

5. Section 228.44 is amended by deleting paragraph (e).

6. Section 228.51 is amended by revising paragraph (c)(1) and deleting paragraph (c)(2):

§ 228.51 Matching rates.

(c) *One hundred percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(b)(3) for:

(1) Day care services provided to children in day care centers, group day care homes, and family day care homes, which are licensed by the State for child day care services and otherwise meet the requirements of § 228.42(a)(2) as modified by the provisions of § 228.42(c) and (d).

(2) Day care services provided to children in their own homes in accordance with § 228.42(a)(1); and

(3) Staff activities in direct support of the child day care services such as: licensing homes or facilities used by title XX children, monitoring title XX child care services delivery, and training staff in accordance with Subpart H of this Part.

7. Section 228.52 is amended by deleting paragraph (b), redesignating paragraph (c) as (b), and redesignating the remaining paragraphs as follows:

§ 228.52 Allotments to States.

(b) *Allotments for fiscal years beginning after June 30, 1976.* (1) The allotment of each State for each fiscal year beginning after June 30, 1976, shall be an amount which bears the same ratio to \$2,500 million as the population of such State bears to the population of all the States.

(2) The allotment for each State will be promulgated for each fiscal year by the Secretary prior to the first day of the third month of the preceding fiscal year, on the basis of the population of each State and of all the States as determined on the basis of the most recent satisfactory data available from the Department of Commerce.

(3)(i) The basic allotment described in paragraph (b)(1) of this section shall be increased by an amount which bears the same ratio to \$40 million for the transition quarter (July 1, 1976 through September 30, 1976) and to \$200 million in FY 1977, 1978 and 1979 as the population for such State bears to the population of all States. The amount of these additional allotments payable to each State shall be the lesser of:

(A) The amount of each additional allotment; or

(B) The amount of actual expenditures incurred for the provision of child day care services and for grants by States to child day care providers for the employment of welfare recipients.

(4) *Exception:* The basic allotment specified in paragraph (b)(1) of each State for FY 1979 shall be an amount which bears the same ratio to \$2.7 billion as the population of each State bears to the population of all the States.

(c) *Certification of allotment need.*

(1) Each fiscal year, each State shall certify to the Secretary, within 30 days after the beginning of the fiscal year, whether the amount of its allotment is greater or less than the amount needed by the State for such fiscal year and, if so, the amount by which the amount of such allotment is greater than such need.

(2) If any State certifies in accordance with paragraph (d)(1) of this section, that the amount of its allotment for any fiscal year is in excess of its need for such year, the amount of the limitation of such State for such year shall be adjusted downward by the amount of such excess.

(3) Of the amounts made available pursuant to paragraph (d)(2) of this section, the Secretary shall allot to the jurisdiction of Puerto Rico \$15,000,000, to the jurisdiction of Guam \$500,000, and to the jurisdiction of the Virgin Islands \$500,000, which shall be available to each such jurisdiction in addition to amounts available under Section 1108 of the Act for the purpose of matching the expenditures of such jurisdictions for services pursuant to sections 3(a) (4) and (5), 403(a)(3), 1003(a) (3) and (4), 1403(a) (3) and (4), and 1603(a) (4) and (5) of the Act, except that if the amounts made available pursuant to paragraph (d)(2) of this section are less than \$16,000,000, such amounts as are available shall be allotted to each of the three jurisdictions in proportion to their respective populations.

(d) *Date of Expenditure.* For purposes of this section, expenditures for services are ordinarily considered to be incurred on the date on which the State or local agency makes payment or the date to which the expenditure

was allocated, pursuant to the cost principles of Subpart Q of 45 CFR Part 74 and the cost allocation procedures of 45 CFR 205.150. In the case of local administration, the date of expenditures by the local agency governs. In the case of purchase of services from another public agency, the date of expenditure by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures, only upon justification by the State to the Administrator and approval by him. In reviewing State requests for approval, the Administrator will consider generally applicable State law, consistency of State practice, particularly in relation to periods prior to October 1, 1975, and other factors relevant to the purposes of this section.

(e) *Procedures for making grants to States.* See 45 CFR Part 201.

§ 228.56 [Amended]

8. Section 228.56(b)(3) is deleted.

Subpart J [Deleted]

8. Subpart J, "Grants to Child Day Care Providers to Employ Welfare Recipients," is deleted in its entirety.

(Section 1102, 49 Stat. 647 (42 USC 1302); and Section 801, Pub. L. 95-600, November 6, 1978.)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

It has been determined that this document does not require preparation of a Regulatory Analysis under Executive Order 12044.

Dated: February 5, 1979.

JIM PARHAM,
Acting Assistant Secretary for
Human Development Services.

Approved: March 3, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-8253 Filed 3-16-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 1—PRACTICE AND PROCEDURE

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Editorial Amendments Concerning Filing of Certain Broadcast Remote Pickup Station Applications

AGENCY: Federal Communications Commission.

ACTION: Final Order.

SUMMARY: FCC rules amended to delete requirement that applicants for broadcast remote pickup station licenses to operate on frequencies in the 25-26 or 150-170 MHz bands within the Chicago Region submit applications to the Chicago Region Land Mobile Spectrum Management Program office at Oak Park, Illinois. Uniform application and filing procedures established for all applicants for broadcast remote pickup licenses.

EFFECTIVE DATE: March 26, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Broadcast Bureau,
(202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: March 7, 1979.

Released: March 14, 1979.

Order. In the Matter of Editorial amendments to Parts 1 and 74 of the FCC Rules concerning filing of certain Broadcast Remote Pickup Station Applications.

1. The Broadcast Bureau has been notified by the Safety and Special Radio Services Bureau that certain applications for broadcast remote pickup stations should no longer be submitted to that Bureau's Oak Park, Illinois, facility for coordination with the Chicago Land Mobile Spectrum Management Program. Under existing procedures as specified in Parts 1 and 74 of the Commission's rules, applicants for remote pickup stations filed by broadcast licensees located within the defined Chicago Region for operation on frequencies in the 25-26 and 150-170 MHz bands are required to file on FCC Form 425 with the S&SRS Bureau's office at Oak Park, Illinois.

2. The editorial amendments to the rules as shown in the attached Appendix delete all references to the use of FCC Form 425 and the filing of broadcast remote pickup license applications for the Chicago Region Land Mobile Spectrum Management Program. All applications for broadcast remote pickup stations are to be filed on FCC Form 313 with the Commission's Washington, D.C. offices commencing on the effective date of this Order. Uniform filing procedures will apply

to all license applicants for stations in this service.

3. We conclude that adoption of the editorial amendments shown in the attached Appendix will serve the public interest. Prior notice of rulemaking, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

4. *Therefore, it is ordered,* That pursuant to Sections 4(i), 303(r) and 5(a)(1) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, Parts 1 and 74 of the Commission's rules and regulations is amended as set forth in the attached Appendix, effective March 26, 1979.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

§ 1.533 [Amended]

1. Section 1.533 is amended by deleting paragraph (a)(9) in its entirety.

§ 1.536 [Amended]

2. Section 1.536 is amended by deleting paragraph (b)(9) in its entirety.

§ 1.539 [Amended]

3. Section 1.539 is amended by deleting paragraph (d)(10) in its entirety.

§ 74.404 [Deleted]

4. Section 74.404 is deleted in its entirety.

§ 74.405 [Deleted]

5. Section 74.405 is deleted in its entirety.

[FR Doc. 79-8212 Filed 3-16-79; 8:45 am]

[6712-01-M]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Class III-B Public Coast Station; Clarification of Requirements for Additional Working Frequency

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Amendment of the rules to clarify the requirements for the assignment of an additional working frequency to a Class III-B Public Coast station. Our rules do not make it clear that this criteria is to be applied on an average daily basis. This action will clarify the requirements.

EFFECTIVE DATE: March 26, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION: Adopted: March 8, 1979.

Released: March 14, 1979.

Order. In the matter of Amendment of §§ 81.303(b) and 81.304(b)(22) of the Commission's rules.

1. Section 81.304(b)(22) of our rules sets the standard that will be used by the Commission in determining whether an existing public Coast III-B station will be authorized an additional working frequency based on the amount of time their present frequency is being used. Section 81.303(b) sets the standard to determine if a new Public Coast station will be allowed to serve the area which duplicates more than 20% of an existing station's coverage area based on the amount of time the existing station's frequency is in use.

2. The Commission has previously recognized that § 81.304(b)(22) of the rules is somewhat confusing and has stated that this rule "is to be applied on the basis of average daily use." While § 81.303(b) was not mentioned in that decision, the wording of the pertinent part of this Section is essentially the same as § 81.304(b)(22). The amendments ordered herein would clarify both sections.

3. Accordingly, §§ 81.303(b) and 81.304(b)(22) of the Commission's rules are amended to reflect this policy. Authority for this amendment is contained in §§ 4(d) and 303 (c) and (r) of the Communications Act of 1934, as amended, and § 0.231(d) of our rules. Since the amendment is editorial in nature, the public notice and procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553 do not apply.

4. Regarding questions on matters covered in this document contact Kemp J. Beaty, telephone (202) 632-7197.

5. In view of the above: *It is ordered*, That the rule amendment set forth in

the attached Appendix is adopted effective March 26, 1979.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

FEDERAL COMMUNICATIONS
COMMISSION,
R. D. LICHTWARDT,
Executive Director.

APPENDIX

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 81—Stations on Land in the Maritime Services and Alaska Public Fixed Stations.

§ 81.303 [Amended]

1. In § 81.303 paragraph (b) is amended by inserting the words "average daily" between the words "in" and "use".

§ 81.304 [Amended]

2. In § 81.304 paragraph (b)(22) is amended by inserting the words "average daily" between the words "in" and "use".

[FR Doc. 79-8257 Filed 3-16-79; 8:45 am]

[6712-01-M]

[Gen. Docket No. 78-208]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Providing for the Use of Single Sideband Emission A3J (Suppressed Carrier) on the Maritime Mobile Service Radiotelephone Frequency 2182 kHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Errata.

SUMMARY: The Report and Order in this matter inadvertently reinstated a provision into our rules which was deleted by a previous Order. This action will correct that error.

EFFECTIVE DATE: March 16, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION:

ERRATA

Released: March 14, 1979.

In the matter of amendment of Parts 81 and 83—to provide for the use of single sideband emission A3J (sup-

pressed carrier) on the maritime mobile service radiotelephone frequency 2182 kHz, (see 44 FR 8870)

The Appendix to the Report and Order in this matter (Adopted: January 31, 1979; Released: February 7, 1979; FCC 79-67) contained an error which reinstated a provision into the table in Section 83.233 of our rules regarding 123.1 MHz which was deleted by a previous Order (Adopted: November 24, 1978; Released November 27, 1978; mimeo 4660). The table appearing in Section 83.233 is amended to read as follows:

§ 83.233 Frequencies for use in distress.

Frequency band	Emission	Carrier frequency
* * *	* * *	* * *
118 to 136 MHz...	A2, A3, A9	121.5 MHz
156 to 162 MHz...	F3	156.8 MHz
* * *	* * *	* * *

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-8289 Filed 3-16-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 293 (Sub No. 8)]

PART 1127—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

Decision

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Comprehensive report on Revisions to Commuter Standards.

SUMMARY: RSPO has evaluated the comments filed by the parties in response to the restatement of the Commuter Standards published January 11, 1978 (43 FR 1715). The accompanying report and appended standards reflect the results of RSPO's evaluation and subsequent amendments to the Standards. In response to a proposed rulemaking relating to responsibility for personal injuries and property damage published October 11, 1977 (42

¹ Memorandum Opinion and Order, Paragraph 89, SS Dockets 78-259-263; Adopted: August 14, 1978 (FCC 78-620; 95898); Released: August 23, 1978.

FR 54920), RSPO reaffirms its position that absent agreement between the parties or further action by the Congress, the Standards as promulgated provide a reasonable basis for assigning the costs of liability and indemnification.

In addition, the Commuter Standards have been amended to:

- (i) Incorporate provisions concerning additional rail passenger service;
- (ii) Repeal the emergency operating payment section of the Standards; and
- (iii) Expand the Standards to include commuter services previously covered by existing leases and agreements.

DATE: Accounting system revisions are effective retroactive to January 1, 1978. The emergency operating payment section is repealed retroactive to October 1, 1978. Provisions for additional rail passenger service and expansion of the Standards to include commuter service previously covered by existing leases and agreements are retroactive to November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

David S. Rind, Cost Evaluation Branch, Rail Service Planning Office, Interstate Commerce Commission, 1900 L Street NW., Washington, D.C. 20036, 202-254-7552.

SUPPLEMENTARY INFORMATION: This comprehensive report addresses areas which are the subject of rulemaking proceedings instituted by RSPO and the results of legislation passed by Congress. The substantive areas are: revision of the accounting system applicable to the Commuter Standards; provisions for additional rail passenger service and expansion of the Standards to include commuter services previously covered by existing leases and agreements; repeal of the emergency operating payment section; and affirming the responsibility for personal injuries and property damage. As a result of our analysis of the appropriate documents relating to the areas of substance discussed in this report, some revisions, deletions and amendments have been made to the Standards. The specific changes to the Standards will be discussed under the appropriate sections captioned below.

The notice of proposed rulemaking instituted October 19, 1978 relating to changes to the Commuter Standards necessitated by the interpretation issued by RSPO concerning the "900-day option" under which a commuter authority could purchase certain lines from Consolidated Rail Corporation (Conrail) for commuter service will be discussed in a subsequent report.

ACCOUNTING SYSTEM REVISIONS TO STANDARDS

On January 11, 1978, RSPO restated its Commuter Standards (49 CFR Part 1127) to conform with ICC's new Uniform System of Accounts (USOA) and invited comments on any substantive changes which may have been made in the conversion and on the applicability of the present apportionment formulae of common costs in view of the new USOA (43 FR 1715).

Upon reviewing the initial statements of interested persons, the Office concluded that some of the issues raised by the commentators were of sufficient importance to warrant an opportunity for reply. Reply comments were invited on the following issues:

- (1) Relief from using the new accounting system for the Commuter Standards.
- (2) A new procedure for assigning fringe benefit costs and the inclusion of additional items in the fringe benefit account.
- (3) Clarification of the definition of "actual" costs.
- (4) Clarification of the Speed Factored Gross Tons Formula regarding tracks or other roadway facilities that could be removed if the commuter service were terminated and accompanying reduction of freight train speeds on main lines where commuter service was operated.
- (5) The need to include a methodology for accounting for police patrol and clearing accounts.

The following parties filed initial statements and/or replies:

State of New Jersey Department of Transportation (NJDOT).
Southeastern Pennsylvania Transportation Authority (SEPTA).
Consolidated Rail Corporation (Conrail).
Commonwealth of Pennsylvania.
Delaware Transportation Authority.
National Railroad Passenger Corporation (AMTRAK).

RSPO has carefully considered the views of the parties and has made some revisions in the restated Standards, the complete text of which is appended to this report. Many of the changes are of a technical or editorial nature and will not be addressed in this report. Other more significant revisions are discussed below.

Two technical additions do warrant comment. Delaware Transportation Authority, SEPTA and NJDOT point out that the "corresponding" freight accounts should be included in the base for the apportionment of certain overhead accounts where the person (or activity) does freight, passenger, and commuter work and it is not possible to distinguish between the services. These parties are correct. The exclusion of the corresponding freight in the apportionment base of certain overhead accounts would result in the

commuter service subsidizing the freight service. These accounts were inadvertently omitted from the restated Standards and the Standards have been amended to include the appropriate freight accounts in the apportionment base.

Also, the ICC Bureau of Accounts issued Accounting Series Circular No. 168 on January 25, 1978, containing technical changes and clarifications to the new USOA. Pertinent changes listed in this circular are incorporated in the revised Standards appended to this report.

RELIEF FROM REPORTING UNDER NEW USOA

In its initial and reply comments, Conrail objects to having to use the new USOA when reporting commuter service revenue and expense data. Conrail asserts that the new USOA does not address costs incurred on any particular segment of railroad, nor does it provide a means whereby costs may be charged to a particular subsidized service. Conrail states that it has arranged to satisfy the required conversion to the new USOA on a system basis, but only for the purpose of filing its annual report (Form R-1). As a result, the underlying data and all subsidiary accounting reports would be maintained under the 1977 chart of accounts. This accommodation accords with its understanding of the position of the ICC as stated in Accounting Series Circular No. 168, Appendix II, Question 15. Question 15 and the ICC answer is as follows:

15. Question: We would like to reaffirm that the ICC will not now, or in the future, require a railroad to code on source documents or managerial reports their six digit operating expense numbers.

Answer: The ICC does not now, nor will it in the foreseeable future, require a railroad to code the six digit operating expense numbers on source documents or managerial reports. However, a railroad must have an adequate audit trail from the USOA accounts back to source documents, and conversely railroads must provide conversion tables showing a trail from their managerial systems to the ICC reported accounts.

Conrail contends that it should not be compelled to produce data in the form specified by the new or former USOA. It argues that most commuter charges are incurred solely for the benefit of an individual service, and that there is no contractual or implicit requirement that such costs be exhibited or audited on any basis other than direct incurrence. Conrail says the majority of the common expenses in commuter services are site related, e.g., interlocking plants, track structure, electric traction facilities and stations. The common charges incurred at these sites are collected and identified for billing purposes in cost centers. These charges are assembled in-

dependent of primary accounts, and are not derivable from either the former USOA or the new USOA. Thus, a more precise audit trail than that available for the R-1 is maintained insofar as the determination of these commuter service costs are concerned.

As a result, Conrail requests that RSPO established by interpretation or rule that compliance with or reference to the new USOA is absolutely not required with respect to the derivation of data for the submission of Financial Status Reports to the subsidizers. In its reply, Conrail further asserts that RSPO should vacate its January 11, 1978, Report, reinstate the Commuter Standards issued on August 3, 1976, as amended December 15, 1976, and thereby omit any reference to the ICC's new USOA.

In its reply, SEPTA regards Conrail's arguments concerning the new USOA as unsupportable assertions resting on specious logic. SEPTA points out that Section 307 of the 4R Act required the ICC to "issue regulations and procedures prescribing uniform cost and revenue accounting for all common carriers by railroad subject to this part. Such regulations and procedures shall become effective not later than January 1, 1978." SEPTA fears that if Conrail is exempted from using the new USOA, a precedent would be set for wholesale exemptions that would erode the new USOA.

The original Standards issued August 3, 1976, were developed to conform with the former USOA. The Standards were reissued to conform with the new USOA adopted by the ICC. This was the primary purpose of revising the Standards. As SEPTA pointed out in its comments, the new USOA was developed by the ICC under Congressional mandate. The new USOA was established through an ICC rulemaking process. RSPO is not convinced that it should grant Conrail a waiver exempting it from reporting commuter service revenue and cost data in the form prescribed by the new USOA. However, parties to a subsidy agreement may agree to report the required data on a different basis so long as the Financial Status Reports have the data reported in the required format.

Conrail has and presently is maintaining a responsibility, cost center accounting system. As Conrail pointed out, most commuter charges are identified and incurred solely for the benefit of an individual service. These cost centers identify most common costs for billing purposes. This methodology was followed under the former USOA and is being followed under the new USOA. RSPO does not expect Conrail to change this methodology. Conrail has developed a computer program for

bridging the conversion from the former USOA to the new USOA for purposes of reporting data in the ICC Annual Report Form R-1.

RSPO is not requiring Conrail to collect any new or different data, but is only requiring Conrail to assemble the same data the Standards required under the former USOA in the format of the new USOA. It is our understanding that this can be accomplished through the use of Conrail's "conversion program." This uniform presentation of data is necessary for the auditing required by the Federal government and the various state agencies that disburse subsidy funds to Conrail for commuter operations.

FRINGE BENEFITS

In its initial comments, NJDOT contends that since pensions were handled separately from other fringe benefits on an actual basis under the former USOA, they should be handled the same way under the new USOA. According to NJDOT, the inclusion of pensions in fringe benefits could lead to the assignment of pension costs to commuter service in situations where personnel involved in commuter service are not eligible for pensions. SEPTA concurs with NJDOT on this issue. RSPO agrees and the Standards have been amended to include pensions as a separate item assignable on a direct basis as it was originally treated in the Standards.

NJDOT further asserts that under the restated Standards, there has been a substantive change in the fringe benefit accounts under the new USOA, which now include cost items that are not directly related to wages. Specifically, NJDOT points out that under the new USOA, fringe benefits include subsidies for employee lunch rooms and company entertainment facilities for employees' personal use. SEPTA argues that the fringe benefit methodology fails to define what is an includable cost, and that pending the outcome of a proposed rulemaking on this issue, the includable items contained in the former USOA for health and welfare benefits should be used to determine fringe benefit costs.

Conrail, on the other hand, contends that while the restated Standards omit reference to the R-1, the requirement that separate fringe benefit ratios be developed for Transportation, Maintenance of Equipment, Maintenance of Way, and General and Administrative would create an additional accounting and cost burden which is not justified. In lieu of this procedure, Conrail proposes that fringe benefits be computed as a percentage of wages and salaries, based upon the actual fringe benefit costs in the preceding year, but adjusted for known or anticipated changes for the

current year for these categories of employees.

In its reply, Conrail also states that vacation and holiday expenses do not follow the employee but rather the job position and that Conrail is entitled to reimbursement for these expenses. Furthermore, under ICC accounting instructions, the liability for vacation earned in the current year but payable in the next year must be valued at the next year's vacation level.

SEPTA asserts that the adoption of Conrail's methodology would result in broad fringe benefit ratios that would exceed a fair share of the costs which should be paid by SEPTA. Specifically, SEPTA contends that Conrail's approach is deficient for three reasons:

(1) Labor costs collected under Conrail's responsibility accounting system are not broken down among the three categories advocated by Conrail and Conrail's approach would result in arbitrary judgments when applying these ratios;

(2) Many of the fringe benefits are related to the number of employees rather than labor dollars; and

(3) Conrail's method of computing railroad retirement and unemployment taxes would effectively preclude any accountability on the part of the railroad for fringe benefit costs.

The fringe benefit issue has generated considerable comment. As stated at the outset, the principal purpose of reissuing the Standards was to convert them to the new USOA. In developing the new USOA, the ICC rearranged certain accounts combining some items which formerly were separate accounts. RSPO has attempted to apply the same method of assigning common costs that was used in the original Standards. In some instances, including the fringe benefit accounts, costs which had not been included are now commingled into a single account with other employee related items. RSPO believes that the treatment of these items under the new USOA is proper with the qualification that the expense must be related to commuter service. However, commuter authorities feel strongly that since these items have not previously been included as fringe benefits, they should be omitted from the fringe benefit accounts. RSPO disagrees because these items represent a type of compensation paid by Conrail for its employees which existed prior to the institution of the subsidy program. The Standards have been amended to include subsidies for employee lunch rooms. Expenses for company entertainment facilities may be included only if it can be demonstrated that the expense is related to commuter service.

RSPO agrees with SEPTA that Conrail's proposed methodology is too

broad in nature and will not lend itself to the collection of accurate cost data. The present methodology relying first on the manpower utilization plan and then on the apportionment formulae for assigning common costs should result in the assignment of a fair share of the costs to commuter service. Vacation and holiday pay should be recorded in the current year except where a wage increase occurs. In those situations, the increased wage rate differential over the preceding year should be charged to the subsequent year. RSPO is not sufficiently familiar with the details of Conrail's internal responsibility accounting system to address comments alleging deficiencies in Conrail's proposed methodology for allocating fringe benefits. However, RSPO does wish to stress the importance of using the manpower utilization plan in assigning employee related costs.

CLARIFICATION OF "ACTUAL" DEFINITION

When the Standards were converted to the new USOA, RSPO also replaced the paragraphs describing each cost element with a table setting forth both the conversion from the old account to the new account and the basis of assigning costs to commuter service, whether "actual" or apportioned costs. As a result, the definition of "actual" costs has taken on greater significance than before.

SEPTA comments that the definition must be changed if it is to serve its intended purpose. According to SEPTA, the term as it appears in the restated Standards is so general as to lead to the very ambiguity and confusion the Standards were designed to prevent. SEPTA favors the adoption of the term "directly assigned" in lieu of the word "actual." Moreover, the proposed definition, according to SEPTA, should make it clear that directly assigned costs are inherently different from common costs.

Conrail contends that "actual" may well be interpreted as a synonym for solely related and directly attributable, but not common costs. Conrail argues that the use of "actual" coupled with the proposed definition could lead to cross subsidization. Conrail believes that the provision in § 1127.7(a) of the restated Standards that "in assigning costs . . . moneys charged to a particular function shall include the commuter portion of the passenger expenses plus the commuter portion of the common expenses for that function" is an adequate factual description. Therefore, Conrail says the definition of "actual" should be deleted from the restated Standards.

It is apparent that these parties have interpreted "actual" in a different light than we anticipated. The term "actual" was intended to impart

the meaning that was included in the August 1976 Standards. In the original Standards, "actual" was used to signify that no apportionment of costs to a particular account is allowed. Only those costs that could be directly assigned would be includable in the particular account where the term "actual" appeared as the assignment basis. That is the meaning RSPO intends to convey. Accordingly, the definition "actual" has been revised to read: "Charges in the railroad's accounts for facilities, properties and services which are directly identified with commuter service and which exclude costs apportioned under § 1127.7(f)."

SPEED FACTORED GROSS TONS FORMULA (SFGT)

One area of mutual concern to NJDOT, SEPTA, and Conrail is clarification of the SFGT formula regarding excess property. In its reply, NJDOT represents that Conrail and NJDOT have agreed on how this situation should be handled and offer the following wording for the SFGT formula:

(1) In calculating total SFGT, the value of "N" will reflect the total number of tracts presently in place. Any tracks constituting present excess capacity shall be included in this value of "N", and

(2) In calculating SFGT for freight and/or intercity passenger, the value of "N" will reflect the total number of tracks less the number of tracks (if any) which could be eliminated if commuter service were discontinued. Any tracks constituting present excess capacity shall be included in the value of "N" when computing SFGT for freight and/or intercity passenger.

This formulation is consistent with the theory expressed in Interpretation 1, issued June 27, 1977, relating to excess facilities and will be included in the Standards. RSPO would point out that the formula as rephrased assumes that the commuter service is the avoidable service and leaves the residuum of base costs with the owner of the rail properties. The issue of base costs and their relationship to the SFGT formula will be addressed in the forthcoming revisions to the standards resulting from interpretation No. 9 issued August 15, 1978.

Conrail also advocated that a reasonable reduction is the maximum speed for local freight trains should be included in the SFGT formula. There were no further comments on this point and Conrail did not comment on it further in its reply statement. Pending a documented submission by Conrail supporting its assertion for or adjustment to reflect local freight train speeds, RSPO is not convinced that the issue is of sufficient magnitude to

warrant a modification of the SFGT formula.

POLICE PATROL CLEARING ACCOUNTS

The apportionment formulae for common costs assigned to accounts 377-Yardmasters and Clerks or 373-Station Employees do not reflect the functions provided by railroad police forces. NJDOT proposes (and SEPTA concurs in) a detailed procedure for assigning police forces. Conrail contends that police patrol is basically a direct expense and therefore no change in the Standards is required. The accounting for police patrol appears to be an issue that surfaced after the original Standards were issued. RSPO is not convinced that the dollar amount is significant and expects that a majority of the costs associated with this item can be identified through the manpower utilization plan. However, if the parties believe there is a substantial sum of money involved, they are encouraged to conduct a special study to determine the amount and agree on an appropriate basis of assignment to commuter service.

NJDOT and SEPTA also express concern over the handling of clearing accounts for material store expenses, shop expenses and power plant operations. They believe these three categories of expense represent an identifiable activity which should be covered by the Standards, arguing that the distribution of clearing account expenses to various ICC Accounts destroys their functional identity and will lead to an arbitrary assignment of these costs to commuter service. NJDOT proposes a detailed procedure for handling these items. SEPTA also believes that the new USOA provides the necessary collection system so that the clearing accounts and their related costs can be analyzed and assigned directly. Conrail asserts that NJDOT is attempting to amend the USOA and not the Commuter Standards and that the comments should be rejected as beyond the scope of this proceeding.

The ICC methodology of handling clearing accounts is the same as was employed under the former USOA. The items are charged with the appropriate overhead expenses before they are expensed to a specific account. RSPO is not convinced, that overall, the methodology employed in the new USOA is grossly unfair or results in significant distortions in the individual accounts. If any parties disagree, they should propose special studies to derive more equitable methodology.

DESIGNATED AREA

In its initial comments, Conrail states that some subsidizers have interpreted "Designated Area" as strict geographic boundaries around which the commuter service is operated. This

interpretation, according to Conrail, has resulted in disputes relative to the costs of supervisory, administrative, and other functions, which cover a larger geographic area. Conrail contends that such an interpretation does not avoid cross-subsidization and that commuter operations depend upon support personnel and functions which are located outside the geographic area of the service. Conrail proposes a definition that would expand the concept of the designated area.

SEPTA asserts that while Conrail was probably justified in its apprehension that the present definition would cause disagreements over the geographic area to be covered, Conrail erred when it expanded the definition to include functions whose activities are conducted both within and outside the geographic area which are attributable to other services and by deleting part of the present definition. To relieve Conrail's apprehension, SEPTA proposes to add the following sentence to the definition: "A designated area may extend beyond or be outside the commuter service area."

NJDOT says that designated area is a means of limiting the universe of common costs which are to be allocated to commuter service under the facility utilization plan. A facility utilization plan, according to NJDOT, will cover a number of designated areas. Conrail's problem concerns those support functions that lie geographically outside the commuter service area and, in the case of NJDOT, relate primarily to maintenance of rolling stock. NJDOT asserts that these items, in the case of significant users, should be included as a designated area and included in the facility utilization plan. This would provide a mechanism for isolating directly identifiable costs. (In the case of insignificant users, the subsidizer would pay only the directly identifiable costs plus an allowance for overhead.) NJDOT's position is that the assignment of costs related to common activities should be related to as small an area as possible. In cases where an activity extends beyond a given "designated area," the base for allocating the long term variable portion of common costs should include all activities and functions under the supervision or span of control of the activity in question. NJDOT's perception of how the designated area concept should work in conjunction with the facility utilization plan and manpower utilization plan is correct and reflects the meaning and interpretation intended by RSPO. RSPO is not persuaded to change the definition of "designated area"; however, to clarify our intent, the sentence suggested by SEPTA ("A designated area may extend beyond or be outside the com-

muter service area") has been added to the definition.

SIGNALS AND INTERLOCKERS

NJDOT observes that since the new USOA provides for a cost separation between running and switching, separate assignment bases should be incorporated in the Standards. NJDOT suggests that cars handled would be an appropriate measure for assigning signal and interlocker costs. Conrail contends that the common costs associated with the operation of signals and interlockers should be assigned on the same basis as the common costs of maintenance of signals and interlockers. Under the present methodology, maintenance costs are assigned on train movements through the facility and operational costs are assigned on the total train movements in the designated area. In its reply, SEPTA agrees with Conrail's observation that both maintenance and operational costs should be assigned on the same basis, but that the basis should be modified to reflect a separate ratio, i.e., "yard movements" for the yard portion of the expenses.

RSPO agrees with Conrail and SEPTA that maintenance and operational costs should be assigned on the same basis. Maintenance costs are correctly related to train movements through a facility because this is the measure that best reflects, on a use basis, the cost of maintenance at that particular facility. Likewise, after evaluating the positions of the parties, we believe that the operational costs should also be allocated on the same basis, because operational costs are largely labor in nature and relate to a defined territory. The person working in the interlocker has responsibility over train movements while they are in his interlocker territory. Thus, the assignment of operational costs based on train movements through the interlocker should fairly reflect the proper level of costs that should be assigned to commuter service. The Standards appended to this report reflect this methodology.

NJDOT and SEPTA recommend a separate apportionment basis for the yard portion of signal and interlocker maintenance costs. RSPO is not aware of any basic records or source documents which would provide a means of collecting the data necessary to enable an equitable assignment of costs to commuter service without imposing an additional data collection burden on the railroad. We believe this issue can be resolved through the facility utilization plan and that these costs can be assigned on a mutually acceptable basis predicated on use.

POWER TRANSMISSION SYSTEM COSTS

Conrail asserts that it is not possible to provide the designated data prescribed in the Standards for assigning transportation costs for electric power purchased/produced for motive power based on the actual costs of kilowatt hours (KWH) consumed in commuter service. Power is purchased, according to Conrail, from several electric utility companies, none of which is solely confined to any commuter service area. Conrail recommends that the Standards be revised to read: "The cost of power consumed should be apportioned among service(s) based on the ratio of equated KWH consumed by each service to the total equated KWH consumed by all services, determined by special studies and current operating statistics. The peak period power demand (time of day and volume of power demanded) charges will be apportioned to each of the services based upon a special study."

SEPTA asserts that Conrail's proposal is based on undefined equated KWH and undescribed special studies. In addition, says SEPTA, Conrail is silent as to the apportionment of the variable portion of common costs of power distribution system maintenance. SEPTA contends that those problems would not arise on its Reading Division since all traction power used by SEPTA is billed direct for the power consumed. However, SEPTA does state that since there would be a problem on its Philadelphia Division, a mutually agreeable special study should be conducted under the joint auspices of SEPTA, Amtrak, and Conrail. SEPTA suggests some thirteen different service factors, ranging from commuter car miles to metroliner cars in service, might be used to properly assign the costs to commuter service.

SEPTA also states that once the consumption factors are determined, they could be tested each month by computing consumption for each service from recorded operating statistics and comparing the total computed consumption and peak demand with the total metered amounts. Any serious discrepancy would signal the need to recompute all of the factors, while minor discrepancies could be adjusted to match the metered results. Power would be charged on the basis of consumption and share of peak demand. Any variable common cost of the maintenance would be apportioned in proportion to the calculated KWH apportionment.

SEPTA's proposed methodology for resolving this issue seems overly complex. When the Standards were first established, SEPTA concurred with the use of kilowatt hours as the assignment basis for power systems and the retention of kilowatt hours for the Electric Power Purchased/Produced

for Motive Power, noting that the recognition of the peak demand factor would be overly complex.

After reviewing Conrail's and SEPTA's comments and the present methodology of assigning these costs, it appears that RSPO may have created a burdensome problem of data gathering that was not intended. The intent was for the kilowatt hours consumed in commuter service developed from Power Systems (former account numbers 253 and 257) should be the starting point for determining the cost of Electric Power Purchased/Produced for Motive Power. This would be supplemented by the peak power demand factor. Accordingly, the methodology for assigning the common costs of Electric Power Purchased/Produced for Motive Power will be modified to specify the use of the kilowatt hours developed for Power Systems adjusted to reflect the peak power demand factor which may be developed from a special study. RSPO agrees with SEPTA that the special studies should be clearly delineated as to purpose, scope, and cost.

OTHER ISSUES

Delaware Transportation Authority and SEPTA contend that the statement "In assigning costs, it is understood that the moneys charged to a particular function shall include the commuter portion of the passenger expenses, plus the commuter portion of the common expenses for that function" is ambiguous and will be misinterpreted. These parties apparently feel this statement may allow the railroad to commingle direct and apportioned costs. This is definitely not our intent. We simply wanted to stress that the new USOA has a freight, a passenger and a common designation for most of the accounts and that for the purpose of determining commuter service costs, the includable items are the commuter portion of the passenger account and the commuter portion of the common account.

SEPTA and NJDOT want the financial status reports and subsidy estimates expanded to include a more specific separation of the data. These reports are informational summaries and specific supporting data are available to the subsidizer at the railroad's office, as specified in §1127.5 of the standards. Interpretation No. 3 (42 FR 62923), we believe, fairly disposed of this matter:

The Office notes that Conrail . . . is willing to comply with reasonable informational requests and that it is prepared to develop such information in cooperation with New Jersey. The Office would encourage the parties to work together to reach an agreement that provides New Jersey with the data that it needs without creating unreasonable demands on Conrail's personnel and without, consequently, greatly adding to the adminis-

trative costs of the commuter service subsidy program in New Jersey.

SEPTA comments that in converting to the new accounting system Account 253-Power Plants and Account 257-Power Transmission Systems were combined, rendering the present apportionment factor of kilowatt hours consumed inappropriate for the portion of costs formerly in account 253 that relate to shops and buildings. In establishing the new USOA, the building-related costs elements of old accounts 253 and 257 were included in new accounts that relate to the maintenance of buildings and were not combined with power transmission systems. Thus, the existing apportionment ratios for assigning common costs to these functions are still appropriate and no change in the assignment basis is necessary.

SEPTA asserts that with the establishment of separate accounts for running and switching, the common costs associated with highway grade crossings should be separately assigned. RSPO agrees. The highway grade crossing expenses will be assigned separately, based on the running and switching assignment basis used for track maintenance expenses.

SEPTA points out that there is no basis in the restated Standards for assigning the revenues for Electric Power Purchased/Produced for both train and yard operations. Under the original Standards, the revenue from the sale of such power was not included in the Standards. However, under the new USOA, this revenue is included in Account 110-Incidental. SEPTA is correct that the revenues and costs, where applicable, should be assigned on the same basis. Therefore, the Standards have been amended to reflect the assignment of revenues from the sale of electric power on the same basis as the costs of such power.

SEPTA contends that Amtrak should be required to follow the new USOA for the purpose of recording commuter service costs. In response, Amtrak submitted a copy of an ICC order served December 27, 1977, in which the ICC gave the following reasons for exempting Amtrak from reporting under the new USOA:

(1) The revised rules are designed to provide data on freight, rather than passenger, operations;

(2) The present system of accounts will provide sufficient information for Commission needs; and

(3) We are developing a system of accounts designed for reporting passenger operations, and it would be an undue hardship for Amtrak to convert to a new accounting system twice. Accordingly, the requested exemption should be granted. Amtrak states that it will make available any records SEPTA reasonably requests in connec-

tion with the services and facilities Amtrak provides for the operation of SEPTA's trains.

Several parties raised other issues, which are outside the scope of this rulemaking. For example, SEPTA proposes what it feels would be a more equitable procedure for assigning the costs incurred for Road Property Damaged. Commonwealth of Pennsylvania also raised two issues, one relating to revenues attributable to commuter rail service where two or more commuter services are involved, and the other relating to the costs of liability being determined by insurance underwriters, which may represent areas of fruitful discussion. However, these matters are beyond the scope of this rulemaking and in any event the data presented is not sufficient to justify amendment. If documented data relating to these and the other issues raised by the parties are submitted in the form of a petition, RSPO will consider reopening the standards to address them.

ADDITIONAL COMMUTER SERVICE

The Local Rail Service Assistance Act of 1978 (Pub. L. 95-607, 92 Stat 3059, November 8, 1978), amends the 3R Act to extend the application of the RSPO Standards. The Standards may now be used to determine the cost of providing additional commuter service in the Region and commuter service previously provided pursuant to leases or agreements in effect when the 3R Act was enacted. The Standards will ultimately apply to all commuter services operated by Conrail.

A number of states and local or regional transportation authorities in the Region are interested in expanding or extending their commuter service or changing present routings. Title II of the Local Rail Service Assistance Act makes this possible by amending the passenger service provisions of the 3R Act. Under the newly enacted section 304(e)(7)(A), Conrail can be required to provide additional rail passenger service, if the state or local authority offers a subsidy in accordance with the RSPO Standards and section 304(c)(2)(A). Additional passenger service may include commuter service that a subsidizer wants Conrail to provide over Conrail's own property, contiguous properties of Amtrak, or contiguous properties for which the subsidizer has access, such as the properties of the bankrupt railroads (section 304(e)(7)(B)). The subsidizer cannot require Conrail to operate over lines belonging to any profitable railroads in the Region (section 304(e)(7)(C)).

The subsidizer, however, must bear any additional costs associated with Conrail's operation of the additional commuter service. These costs include additional expenses arising out of the

construction or modification of capital facilities needed to provide the additional service. If these facility improvements are not made, the subsidizer must then absorb resulting costs of interfering with Conrail's operations. Further, Conrail's existing services are not to be subjected to significant cost increases because of the additional commuter service. If improved scheduling or other operational changes to accommodate the additional service fail to prevent significant cost increases, the subsidizer must undertake appropriate capital improvements before the service begins. The law specifies that the new service cannot interfere with the level and quality of existing passenger and freight service.

Conrail's provision of this additional service is subject to the discontinuance procedures of section 304(e)(2) of the 3R Act, as amended. The provisions relating to additional rail commuter service are contained in a new § 1127.10 of the Standards.

Presently, certain state and transportation authorities are subsidizing Conrail's operation of commuter service pursuant to leases and agreements which were in effect when the 3R Act was enacted. When these leases or contracts expire, the subsidizer can require Conrail under the newly enacted section 304(e)(4)(C) to continue the service, if a subsidy is offered in accordance with the Standards and the requirement of section 304(c)(2)(A). This provision is reflected in § 1127.3(f) of the Commuter Standards.

TERMINATION OF EMERGENCY OPERATING ASSISTANCE

Section 17 of the Urban Mass Transportation Act (UMT Act) provided for emergency operating funds to assist states or local authorities in subsidizing commuter service in the Region. The share of Federal assistance was 100 percent for the 180-day mandatory operation period (which began April 1, 1976), 100 percent for the following 180-day period, 90 percent for the succeeding 12-month period, and 50 percent for the following 180-day period.

The program was expanded by Pub. L. 95-187 (91 Stat. 1385, November 16, 1977), which increased the Federal share in the 50 percent period to 80 percent and extended the program for another 24 months at 50 percent Federal funding; the program would terminate on September 30, 1980 rather than September 30, 1978. Also, the total funding was increased from \$125 million to \$185 million. However, The Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689, November 6, 1978) abolished these amendments to the program by reinstating the original language of section 17; thus no extension of the pro-

gram. This Act also amended section 5 of the UMT Act to provide a new mechanism for funding urban mass transit programs, including commuter services. The new funding process under section 5 became effective October 1, 1978.

In summary, section 17 emergency operating assistance terminated on September 30, 1978. Subsidizing agencies must now look to section 5 for financial assistance. Any remaining funds under the section 17 program remain available until expended so disputes or unsettled claims from prior subsidy periods can be closed out.

Accordingly, the Commuter Standards have been amended to delete references to section 17 of the UMT Act and the emergency operating payment section (formerly § 1127.10 of the Standards). Also, the formal title of the Commuter Standards has been modified by deleting "and Emergency Operating Payments" from the title. The methodology for computing the cost of subsidies has not changed. The existing Commuter Standards will remain in effect to cover disputes and other problems concerning prior subsidy periods. These modifications to the regulations are effective October 1, 1978.

It should be noted that section 18 of the UMT Act has been repealed by the Surface Transportation Act of 1978. We referred to this section in our re-statement of the Commuter Standards to bring them into compliance with the new Uniform System of Accounts (43 FR 1715, January 11, 1978). Reference to section 18 will be deleted.

RESPONSIBILITY FOR PERSONAL INJURIES AND PROPERTY DAMAGE

On June 3, 1977, SEPTA petitioned RSPO to reopen the Standards to consider several issues. In reopening the Standards on October 11, 1977 (42 FR 54920), RSPO denied SEPTA's petition on all but one issue: The responsibility for personal injury and property damage. RSPO invited the parties to brief five questions relating to personal injury and property damage. Comments and reply comments were filed on November 10, 1977 and November 25, 1977.

Under both the Commuter and Freight Standards, the ultimate responsibility for personal injury and liability claims rests with the subsidizer on the premise that claims would not be incurred if the subsidized freight and commuter services were not operated. To guard against large one-time losses, RSPO has urged the parties to establish a casualty reserve fund to act as a "savings account," from which losses could be paid to the extent there were sufficient funds to cover any claims.

The essential issue in this inquiry is whether responsibility for losses arising from personal injuries and property damage, should be shifted from the subsidizer to the railroad. SEPTA asserts that it should not be responsible for reimbursing Conrail for losses caused by Conrail's own willful, reckless or negligent conduct. SEPTA argues that Congress did not intend that Conrail could intentionally injure persons or destroy a subsidizer's property, yet require the subsidizer to bear the consequent financial burden. It believes the concept of "avoidable cost" was not intended to protect Conrail against losses caused by Conrail's recklessness or negligence. SEPTA submits that "the absence of any incentive to operate the commuter service in the manner necessary to minimize personal injuries and property damage is plainly against public policy." It argues, therefore, that Conrail must be required to bear at least part of the financial responsibility for third party claims and damage to SEPTA's facilities which are not covered by insurance where there is good reason to believe that such costs are not "reasonably and necessarily sustained."

To implement this principle, SEPTA recommends that the subsidizer bear responsibility for costs incurred under certain accounts up to a level determined by reference to past loss experience in the operation of the commuter service. The railroad would be responsible for all costs in excess of the level previously determined. The existence of the casualty reserve fund would have no bearing on whether SEPTA or Conrail would ultimately bear a particular loss. Rather, the fund would be available for reimbursement only to the extent that aggregate losses did not exceed past losses for the level of service provided.

SEPTA states that the need for such a limitation is evidenced by an accident in 1977 when a three car commuter train was derailed when it struck a car door that had fallen from a Conrail freight train. There were no personal injuries, but damage was \$50,000, none of which was covered by insurance. According to SEPTA, the inference can be drawn that Conrail could be considered negligent for leaving the freight car door on the tracks.

Conrail opposes any change in the casualty loss regulations, relying upon the following ruling of the RSPO Director during the mediation proceedings of February/March 1977. (Letter March 9, 1977 to counsel of participating parties):

This matter was exhaustively considered by the Office in the rulemaking in which the regional freight standards were adopted (41 FR at 3402). In my opinion, no casualties would occur, or liabilities accrue, but for the provision of subsidized commuter or freight service. In these circumstances, the

ultimate responsibility for personal injury and property damage must be borne by the subsidizer and, in the absence of Conrail consent, cannot be shifted to the operator of the contract service. This is not to say that Conrail is entitled to an indemnification provision in its Subsidy Agreement with SEPTA; however, under the standards, (§1127.7(f)(3)(vii)), SEPTA is responsible for any costs incurred for personal injury and property damage resulting from the operation of its commuter service. The standards make provision for insurance to underwrite these losses, and, at SEPTA's option, require Conrail to establish a casualty reserve fund for the purpose of holding SEPTA harmless for personal injury and property liability. Should, however, insurance and/or such fund prove insufficient, SEPTA must bear the ultimate responsibility for these liabilities.

The casualty loss issue, which arises under both the Commuter and Freight Standards, has been a serious and difficult one to resolve. Under both the Commuter and Freight Standards, the ultimate responsibility for personal injury and property damage is presently imposed upon the subsidizer on the premise that no casualties would occur, or liabilities accrue, but for the provision of subsidized service (see 41 FR 32533 and 41 FR 3402). At the present time, subsidizers are acting as self-insurers for casualty liabilities under \$2,000,000 per claim and Conrail has obtained insurance protecting them against claims between \$2,000,000 and \$50,000,000. In the event of a catastrophe, claims over \$50,000,000 would have to be paid out of the casualty reserve fund, and, if the fund were exhausted, the claims would be borne ultimately by the subsidizer.

To ameliorate this problem, Senator Harrison A. Williams, Jr., introduced the Commuter Rail Passenger Service Continuation Bill 1977 (S. 1890). Section 301 of this bill would reduce the subsidizer's ultimate exposure to claims under \$2,000,000 and over \$50,000,000 by authorizing the United States Railway Association to reimburse them for uninsured casualty losses in amounts not to exceed \$50,000,000 for any single occurrence. No action was taken on this legislation.

Title II, section 201(8) of the Local Rail Service Assistance Act of 1978, (Pub. L. 95-607, 92, Stat. 3059) does, however, contain a provision to aid Congress in resolving the responsibility for personal injuries and property damage. Specifically, Pub. L. 95-607 provides:

The Secretary shall in consultation with the Association, (United States Railway Association) conduct a study to determine the best means of compensating the Corporation (Conrail) for liabilities which it may incur for damages to persons or property resulting from the operation of rail passenger service required to be operated pursuant to

this subsection of section 303(b)(2) of this title, which are not underwritten by private insurance carriers or are not indemnified by a State (or local or regional transportation authority). Such study shall identify the nature of the risks to the Corporation, the probable degree of uninsurability of such risks, and the desirability and feasibility of various indemnification programs, including subsidy offers made pursuant to this section, self insurance through a passenger tax or other mechanism, or government indemnification for such liabilities. Within one year after the date of enactment of this paragraph, the Secretary shall prepare a report with appropriate recommendations and shall submit such report to the Congress. Such report shall specify the most appropriate means of indemnifying the Corporation for such liabilities in a manner which shall prevent the cross subsidization of passenger services with revenues from freight services operated by the Corporation.

After careful consideration of the views of the parties, RSPO is not persuaded that it would be appropriate to modify the Standards to shift responsibility for casualty losses. Rather we will transmit the pleadings (summarized below) to DOT and USRA for their consideration and urge the parties to participate actively in the study. In the absence of definitive legislation, we would also encourage the subsidizers and Conrail to continue to negotiate this issue in the hope that a reasonable accommodation may be reached. In that connection, we too have explored possible alternatives (flat rate, combined insurance for all commuter services—discussed below) which the parties may want to consider. RSPO would of course be available to mediate disputes with the admonition that in the event of impasse the Standards, imposing ultimate liability on the subsidizer, will govern.

It should be noted that this position is consistent with the position taken by Congress in the Conference Report to the Rail Transportation Improvement Act (Pub. L. 94-555) relating to Federal Employee Liability Act, (FELA) claims. In the Conference Report, the House concludes that the ultimate obligations of FELA claims rests with the estates of the railroad in reorganization and not Conrail. Conrail's assumption of these obligations was intended only to prescribe the mechanism by which Conrail was to satisfy these claims. These claims were to be reimbursed by the estates of the bankrupt railroad. RSPO sees no difference between this position and the position established in the Standards if the parties fail to negotiate an agreement.

1. *Whether the railroad should be responsible for its own willful, reckless or negligent conduct.* SEPTA and Rhode Island DOT assert that Conrail must bear the responsibility of willful, reckless or negligent conduct in the operation of commuter rail service to

insure that the service is operated in a safe efficient manner. SEPTA says that it found nothing in the 3R Act, as amended, to support the premise that Conrail should be sheltered from any financial responsibility for its conduct. If a court determines that it is negligent, SEPTA is willing to pay for losses occasioned by such incidents.

Amtrak states that the railroads over which Amtrak operates its service must remain responsible for at least a portion of the risk of liability arising out of their own or negligent conduct. Generally, public policy requires a significant portion of the risk of passenger operations to be borne by the railroad. In connection with this public policy, Amtrak pays the railroads a flat rate per train-mile for their retained risk of liability. Rhode Island DOT also favors the flat rate basis for covering claims that are less than the deductible.

The Six Commuter Roads of Chicago (Chicago Railroads) believe that willfulness and recklessness are never well defined and this would stimulate controversies between the operator and commuter authorities. Furthermore, laws vary from state to state and the proposed doctrine would be discriminatory against business practices in the business community where personal injury and liability claims are part of the cost of doing business. All cost of responsibility for liabilities should rest with the public authorities who require the service to be operated.

Conrail asserts that anything but the avoidable cost approach taken by RSPO would be wrong. In support of this, Conrail points to the March, 1977 ruling of the Director relating to a Conrail-SEPTA mediation proceeding in which the Director said, "no casualties would occur or liabilities accrue but for the provision of subsidized commuter * * * service." Conrail believes it is obligated to perform commuter service upon receipt of solely those costs which RSPO determines to be the avoidable cost of providing the service.

According to Conrail, SEPTA places considerable reliance upon the phrase "reasonable and necessary" in its attempt to escape the financial responsibility for casualty costs. Conrail says it is difficult to imagine how a casualty occurrence could be reasonably and necessarily occasioned.

Any subsidy program which allocates casualty costs will have a problem with the cause of the occurrence and the degree to which the operating carrier can insist upon additional operating techniques as a prerequisite to the assumption of liability. Conrail points to many variables such as contractual relationships with third parties, condition of equipment, and economic and physical constraints which

complicate the assignment of casualty responsibility. It says the negligence standard is also particularly inappropriate in light of the nature of Conrail's common-carrier responsibility with respect to commuter passengers. If financial responsibility is imposed upon Conrail for casualty occurrences in which it is determined to have been negligent under the ordinary practice of imputing negligence, Conrail could have the potential of liability in virtually all casualty occurrences. It is clear, according to Conrail, that subsidizers are in fact attempting to shift the full responsibility of casualty occurrences relating to commuter service to Conrail. It is not clear to Conrail how it would be able to establish that it had not been negligent in a particular occurrence.

Another area of concern to Conrail arises if Conrail accepts responsibility for a particular occurrence in which a subsidizer has control over the commuter service including the level of expenditures which might eliminate casualty occurrences.

SEPTA's argument that Conrail must be required to bear some risk of liability for casualty occurrences to create incentive to operate in an efficient and safe manner is highly suspect in Conrail's eyes. Conrail does not believe that its employees would willfully, intentionally or recklessly endanger the safety of passengers and themselves.

Conrail contends that the imposition of liability for negligence will create significant problems for the processing of third-party claims. If the ultimate responsibility for casualty costs is to be allocated on a fault basis, the railroad's or subsidizer's ability to promptly settle claims would be impaired. In response, Rhode Island DOT says that there should be no differentiation between the subsidizer, the owner of the equipment, and third parties. The owner of the equipment should have adequate insurance coverage.

In its reply, SEPTA voices opposition to the comments made by Conrail and the Chicago railroads relating to the assessment of fault to the subsidizer on the premise that if it were not for the commuter service there would be no casualty occurrence and subsequent loss.

2. *Whether Question 1 should be resolved differently if the railroad's conduct causes direct personal injury or property damage to the subsidizer, as distinguished from third parties.* The parties generally agreed that there should not be a distinction for third parties claims and relied on their comments relating to Question No. 1. Conrail reaffirmed its position that the ultimate responsibility for all direct personal and property damage to the sub-

sidizer's equipment and property rests with the subsidizer.

3. *Whether the railroad should be responsible for excess losses as measured by past loss experience in the operation of a similar level of commuter service.* SEPTA believes that reference to actual past losses would be an appropriate technique for allocating losses when it is difficult to determine fault.

Rhode Island DOT comments that it was clear that some party must suffer the exposure, but that the commuter agencies, for the most part, do not have the ability to collect from their constituent jurisdictions for the cost of any judgment. On the other hand, Congress has mandated that there should be no cross subsidization between the various services. Therefore, the railroads should not be forced to carry the burden.

Amtrak states that the railroad should be responsible for excess losses as measured by prior experience.

The Chicago Railroads answer in the negative to this question, stating that past experience on casualty losses fail to measure the impact of future inflation in the economy. Further, this approach does not reflect the increasing willingness of juries to award larger settlements.

Conrail does not believe that past loss experience would be an appropriate guideline for paying excess losses because of the following:

(a) The loss experience of the previous bankrupt railroads is likely to bear slight resemblance to the loss experience which would have been occasioned by a solvent carrier;

(b) Prior to the adoption of the RSPO Standards, there was little reason for the railroads to identify casualty losses to a particular service or implement procedures to permit segregation of such costs; and

(c) The absence of any such accidents during a specified period is no assurance that a safely run commuter service may be able to continue to avoid a major catastrophe.

4. *Whether the railroad or the subsidizer should be responsible for losses arising from an unintentional accident or act of God.* On this question SEPTA concurs that the subsidizer should be financially responsible for losses arising from acts of God which are inherent in the operation of the service but reiterates its general theme that it would not agree to bear the responsibility for unintentional accidents.

Amtrak comments that to determine the responsibility of a casualty loss on the basis of whether it resulted from an act of God would invite needless litigation. The risk of liability should be allocated among the parties on an arbitrary basis without regard to fault.

The subsidizer, according to Amtrak, should bear the cost of all liability arising out of subsidized operations through a flat rate reimbursement to the railroads for the risk they have retained.

The Chicago Railroads take a firm position that all losses should be fully compensated by the subsidizing agency. Conrail agrees with this view.

5. *Whether the ultimate responsibility for catastrophic loss should be shifted from the subsidizer to the Federal Government.* With the exception of Amtrak, which takes no official position on this question other than to say that the railroad should retain a significant share of the risk, none of the parties had any objection to shifting the burden of covering catastrophic losses to the Federal Government.

NJDOT raises the point that in many states, including New Jersey, the state constitution forbids open-ended agreements which have no maximum dollar limitation. In the event of catastrophic losses, the New Jersey Commuter Operating Agency could be held criminally liable if it agreed to pay losses which exceeded available appropriations.

NJDOT suggests that the contract language contained in the NJDOT proposed agreement with Conrail is a viable way of handling the casualty and property damage issues in this rulemaking. The contract language negotiated by NJDOT and Conrail generally follows the allocation procedures contained in the Standards. When casualty occurrences arise from incidents affecting NJDOT Contract Services and other services, NJDOT is responsible for injuries to and property damage of contract service employees and passengers. All other categories of liability and property damage costs in the proposed NJDOT agreement are the responsibility of Conrail. In assigning liability costs between NJDOT, Conrail, and Amtrak, the contract assesses liability to the parties on a no-fault basis.

In the event of further negotiations on this issue, the assignment of liability on a negotiable and reasonable basis cannot be overstressed. In a recent Commission compensation case involving Amtrak and the Texas and Pacific Railroad, the liability issue engendered diverse opinions on what was reasonable and equitable. Amtrak relied on a rate per train-mile specified in its national contract as a just and reasonable basis of compensation for assumption of liability by the Texas and Pacific Railroad. Texas and Pacific felt that this amount was entirely beyond the realm of reason, arguing that at Amtrak's proposed rate per train-mile, it would take 20-25 years to be made whole on a small claim. After over three years of litigation, the

Commission doubled the train-mile rate in its final determination (348 ICC 645). This illustrates the futility of negotiating from extreme positions. Whatever the merit of a flat rate resolution, RSPO would expect the parties to negotiate constructively and in good faith. As noted, RSPO is available to mediate differences.

As pointed out above, all of the parties who commented on the ultimate responsibility for catastrophic loss favored shifting the burden to the Federal government. Legislation contained in Pub. L. 95-607 provides for the DOT and the USRA to conduct a study to determine the best means of compensating Conrail for liabilities which it may incur for damages to personal property, resulting from the operation of rail passenger service required to be operated pursuant to the 3R Act, as amended, which are not underwritten by private insurance carriers or are not indemnified by a state, local or regional transportation authority. By November 8, 1979, the Secretary shall prepare a report with appropriate recommendations and submit the report to Congress.

In the absence of an agreement and pending Congressional direction, the Standards do provide a reasonable basis for assigning the costs of liability and indemnification. RSPO recognizes a problem that could arise if subsidizers incur a rash of incidents below the \$2,000,000 deductible coupled with a catastrophic loss in excess of the \$50,000,000 maximum. The end result could be the discontinuance of the commuter service if local or state laws prohibit additional payments to cover such losses.

Recent history indicates that the \$50 million maximum may be adequate. In separate incidents in 1971 and 1973 (the latter resulting in loss of life) total claims were approximately \$2.1 million and \$15 million, respectively.

Nevertheless, the commuter authorities should explore with Conrail the prospects for insurance coverage in excess of \$50 million if they feel the risk of claims over the present maximum is distinct. RSPO's discussions with insurance persons indicates that additional coverage may be available in a premium range of five to six thousand dollars per million dollars of coverage. Thus, an additional \$25 million in coverage could cost approximately \$125,000 to \$150,000 per year. It also may be possible to reduce exposure with a policy similar to the one presently in effect for the subsidized freight lines where the deductible is lowered from \$2 million to \$100,000 per occurrence for an annual premium of \$400,000 per year. The commuter authorities should seriously consider the feasibility of banding together to

reduce their individual exposure. Information available to RSPO suggests that this may be more economical than the current insuring mechanism of being a rider on Conrail's standard policy.

Part 1127 of Chapter X of Title 49 of the Code of Federal Regulations appended to this report is revised and adopted effective retroactively to: January 1, 1978 for the accounting system revisions; October 1, 1978 for repeal of the emergency operating payment section (§ 1127.10); and November 8, 1978 for new provisions covering additional passenger service (new § 1127.10) and coverage of commuter services that were previously exempt from the Standards (§ 1127.3(f)).

This decision does not significantly affect the quality of the human environment.

Issued March 9, 1979 by Alexander L. Morton, Director, Rail Services Planning Office.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

PART 1127—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

Sec.

- 1127.1 Definitions.
- 1127.2 Purpose and scope.
- 1127.3 Subsidy agreement.
- 1127.4 Interpretations of the Standards.
- 1127.5 Access to records, audit and inspection.
- 1127.6 Revenues attributable to commuter rail service.
- 1127.7 Avoidable costs of providing service.
- 1127.8 Valuation of rail properties.
- 1127.9 Reasonable return on the value of the properties.
- 1127.10 Additional rail passenger service.
- Appendix I Subsidy Estimate.
- Appendix II Financial Status Report.
- Appendix III Speed Factored Gross Tons Formula (SFGT).

AUTHORITY: Sec. 205(d)(5)(A) and (6) of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by section 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57; Pub. L. 95-473, 92 Stat. 1355 (49 U.S.C. 10362).

§ 1127.1 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

"Account" means an account in the ICC's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

"3R Act" means the Regional Rail Reorganization Act of 1973 (Public Law 93-236 (45 U.S.C. 701 *et. seq.*)) as amended by the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210 (90 Stat. 31 *et. seq.*)) and the Local Rail Service As-

sistance Act of 1978 (Pub. L. 95-607 (92 Stat. 3059 *et. seq.*)).

"Actual" means charges in the railroad's accounts for facilities, properties and services which are directly identified with commuter service excluding those costs which are apportioned under section 1127.7(f).

"Amtrak" means the National Railroad Passenger Corporation.

"Base period" means a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available.

"Common costs" means charges in the railroad's accounts for facilities, properties and services in the designated area which are incurred by the subsidizer and other users and which are not solely for the benefit of a particular service.

"Commuter service" means the specific service for which the subsidizer has offered or agreed to make continuation payments.

"Conrail" means the Consolidated Rail Corporation.

"Designated area" means a portion of the railroad's facilities, such as track segments, buildings and yards, for which costs are collected and apportioned between commuter and other services. A designated area may extend beyond or outside the commuter service area.

"Facilities Utilization Plan" means a document identifying and itemizing the road and equipment properties used in providing commuter passenger service.

"Form R-1" means the railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

"ICC" means Interstate Commerce Commission.

"Manpower Utilization Plan" means a document identifying the railroad forces used in providing commuter passenger service.

"4R Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31 *et. seq.*).

"Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), including Conrail and Amtrak.

"RSPO" means the Rail Services Planning Office of the ICC.

"Secretary" means the Secretary of Transportation or his designated representative.

"Standards" means 49 CFR Part 1127 Standards for Determining Commuter Rail Service Continuation Subsidies.

"Subsidizer" means a State or a local or regional transportation authority which offers to make or makes a pay-

ment to continue commuter rail service pursuant to sections 304(c) and 304(e) of the 3R Act as amended.

"Subsidy period" means the term for which a subsidy agreement has been negotiated and is in operation.

"XX" means that where this notation precedes the last four digits of an account number (e.g. XX-16-02), all accounts with identical last four digits (e.g. 11-16-02, 21-16-02, 41-16-02 and 61-16-02) are to be included.

§ 1127.2 Purpose and scope.

(a) Section 304(e)(1), as amended, of the 3R Act requires Conrail (or a profitable railroad) to provide commuter rail service for a period of 180 days commencing April 1, 1976, on all rail properties over which a railroad in reorganization in the Northeast and Midwest Region, or a person leased, operated, or controlled by such a railroad, was providing service as of that date regardless of whether or not the properties were designated in the Final System Plan of the United States Railway Association as rail properties over which rail service is required to be operated.

(b) Section 304(c)(2)(A) and section 304(e)(4) of the 3R Act, as amended, provide that no commuter rail service may be discontinued, and no rail properties may be abandoned, if a subsidizer offers financial assistance in the form of a rail service continuation payment which is designed to cover the difference between the avoidable costs of providing commuter rail service on the rail properties and the revenues attributable to such properties, together with a reasonable return on the value of the properties.

(c) Section 205(d)(6) of the 3R Act, as amended, authorizes RSPO to determine and publish Standards for defining (1) the "revenue attributable to the rail properties", (2) the "avoidable cost of providing service", and (3) a "reasonable return on value", as those phrases are used in section 304 of the 3R Act, as amended.

(d) Section 205(d)(5) of the 3R Act, as amended, directs RSPO to determine and publish Standards for the computation of subsidies for commuter rail service (except passenger service compensation disputes subject to the jurisdiction of the ICC) which are consistent with the compensation principles described in the Final System Plan and which avoid cross subsidization among commuter, intercity, and freight rail services.

(e) These regulations set forth a method for establishing an estimated subsidy payment, which will enable a prospective subsidizer to formulate a subsidy offer within the context of section 304 of the 3R Act, as amended, and provide a basis for subsidy payment pending the negotiation of a sub-

sidy agreement. When an agreement is concluded, subsequent payments shall be based on the negotiated subsidy. The final payment shall be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in the subsidy period.

(f) Section 304(e)(4)(C) of the 3R Act, as amended, provides that the Commuter Standards published as 49 CFR Part 1127, Standards For Determining Commuter Rail Service Continuation Subsidies under section 205(d) (5)(A) and (6) of the 3R Act, as amended, shall apply to rail passenger service provided under an agreement or lease pursuant to sections 303(b)(2) or 304(c)(2)(B) of the 3R Act, as amended, when an offer is made for the continuation of rail passenger service beyond the period required by such agreement or lease.

§ 1127.3 Subsidy agreement.

(a) *Notice of Intention.* A prospective subsidizer shall notify the railroad of its intention to offer financial assistance for the continuation of commuter service no later than 40 days before the offer is to be tendered. The Notice shall specify:

(1) All modifications in the fares to be charged and in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify;

(2) The length of the subsidy period; and

(3) The name and address of the prospective subsidizer.

A copy of the Notice shall be served concurrently on RSPO and the Secretary.

(b) *Subsidy Estimate.* The railroad shall compute a subsidy estimate predicated on the information contained in the Notice and the revenues attributable, avoidable costs of providing service, and reasonable return on value for the based period in accordance with the methodology prescribed in §§ 1127.6 through 1127.9 and in the format specified in Appendix I to this part. The estimate shall be adjusted as necessary to allow for any actual or projected variations in service, e.g. seasonal fluctuations in traffic or extraordinary events affecting service levels. The bases of any adjustments shall be stated with particularity. The railroad's estimate and the general terms it proposes for an agreement shall be served on the prospective subsidizer (with copies to RSPO and the Secretary) as soon as possible but not later than 30 days after the Notice is received.

(c) *Offer of Financial Assistance.* The prospective subsidizer must formulate an offer of subsidy predicated

on the railroad's estimate, but may propose modifications which are consistent with these Standards. Subsidy offers must be served on the railroad (with copies to RSPO and the Secretary) not less than 60 days before the end of the subsidy period. The offer shall contain:

(1) A subsidy estimate in the form prescribed in Appendix I to this part;

(2) A resolution, authorization or other evidence that the prospective subsidizer has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize the service;

(3) Information demonstrating that the prospective subsidizer has, or within a reasonable time will have, the financial resources to subsidize the service and otherwise fulfill its contractual obligations; and

(4) A subsidy payment for the first month of service.

(d) *Negotiations*—(1) *General.* The railroad and the prospective subsidizer shall negotiate an initial subsidy agreement as soon as possible. The parties may agree in arm's-length negotiations to provisions which modify the Standards, subject to review of such modifications by RSPO. RSPO would not expect to disapprove variations from the Standards which are the product of arm's-length negotiations and which are shown to be reasonable in the light of the pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with RSPO for its review.

(2) *Significant Use.* Unless the parties agree otherwise, the subsidizer shall be deemed a significant user of the rail properties in the areas designated on the facilities utilization plan, and shall be assigned the directly identifiable and common costs of providing the commuter passenger service.

(3) *Insignificant Use.* A subsidizer proposing incidental use of rail properties in the designated area may be assigned the directly identifiable costs incurred in providing the commuter passenger services, plus an allowance for overhead as negotiated by the parties. If the parties are unable to agree on an overhead allowance, the methodology for apportioning common costs specified in § 1127.7 shall apply.

(4) *Mediation.* Upon request of either party, RSPO will mediate disagreements concerning the facilities utilization plan, the manpower utilization plan, the subsidy agreement and the application of these Standards.

(e) *Subsidy Payments.* The subsidizer shall make subsidy payments monthly in advance, based either upon the negotiated estimate, or in the absence of a subsidy agreement, upon the subsidizer's offer of financial assistance. The payment shall be deter-

mined by dividing the total subsidy by the number of months in the subsidy period. Interest on overdue subsidy payments shall accrue, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, for such period as they remain unpaid and the railroad has not terminated the service. The final subsidy payment shall be adjusted retroactively within 60 days of the filing of the final Financial Status Report required by paragraph (f) of this section to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in providing rail commuter service during the subsidy period. The railroad shall establish a system to collect the data necessary to make the adjustment. If the subsidizer is entitled to a refund, the railroad shall pay interest on the overpayment, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, accruing from the end of the subsidy period until the refund is made.

(f) *Financial Status Report.* The railroad shall submit to the subsidizer and RSPO a Financial Status Report in the form prescribed in Appendix II to this part within 60 days after the end of each three months of the subsidy period. Significant deviations from the subsidy estimate must be explained. Unless the parties otherwise agree, the second-to-last report shall be the basis for negotiating the subsequent subsidy agreement. The final report shall be the basis of the subsidy payment adjustment.

§ 1127.4 Interpretations of the Standards.

Parties desiring an interpretation of the Standards should file a written petition citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner should identify those parties and serve each of them with a copy. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. RSPO will issue an interpretation, unless it concludes that the matter raised requires amendment of the Standards, in which case RSPO will institute a rulemaking proceeding.

§ 1127.5 Access to records, audit and inspection.

(a) The subsidizer, RSPO, and the Secretary shall have reasonable access to the records, accounts, working papers, and other documents and to the properties and equipment of any railroad, which provides commuter passenger service or whose properties and equipment are used in providing

commuter passenger service for the following purposes:

(1) To verify the accuracy and completeness of the subsidy estimate, the facilities utilization plan, the manpower utilization plan, and the Financial Status Reports;

(2) To audit the actual revenues attributable, costs incurred and service units maintained during the subsidy period;

(3) To inspect the properties and equipment used in providing the commuter passenger service and to measure the performance of the railroad under the offer of financial assistance and the subsidy agreement; or

(b) The properties and records described in paragraph (a) of this section shall be made available for inspection and examination by the subsidizer, RSPO, and the Secretary during regular business hours at a time and place mutually agreeable to the parties. The railroad shall also reproduce such records, providing the requesting party pays the reasonable cost thereof.

§ 1127.6 Revenues attributable to commuter rail service.

The revenues attributable to commuter rail service shall be the total of the revenues, rentals and allowances assigned in accordance with this section. Where a third party controls revenues or rents attributable to the commuter service, the railroad shall credit the commuter service with the amounts of such revenues or rents credited to it by the third party, and shall use its best efforts to negotiate equitable apportionments. Revenues attributable to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. The revenues, rentals and allowances assigned shall be derived from the following accounts.

(a) *Revenue Accounts.* (1) Account 101—Freight (Mail portion) Account 102—Passenger; Account 103—Passenger Related; Account 104—Switching; Account 105—Water Transfers. The revenues assigned to these accounts shall be the actual revenues attributable to commuter service that are directly identified with the operation of commuter trains, excluding rail service continuation payments.

(2) *Account 110—Incidental.* The revenues assigned to this account earned on commuter trains shall be credited directly to the commuter service. The commuter service portion of revenues generated at fixed facilities used in common with other services shall be determined from the relative passenger on-off counts (including pass riders) at those facilities. Special studies of on-off counts may be substituted for continuous records of such

counts where desired. Any amounts included in this account from the sale of electric current or power shall be assigned to commuter service in accordance with § 1127.7(f)(3)(v) if related to train operations and (§ 1127.7(f)(3)(ix)) if related to yard operations.

(3) *Account 121—Joint facility—Cr.; Account 122—Joint facility—Dr.* To the extent that the terms of joint facility agreements yield apportionments of revenues to commuter services, the amounts so yielded shall be credited or debited directly to the commuter service. If the terms of the agreements do not yield such apportionments, passenger on-off counts (including pass riders) shall be the basis of apportionment at joint facilities where passengers are boarded or discharged; and at other facilities counts of cars handled as developed from special studies or continuous records shall be the basis of apportionment.

(b) *Rentals—Account 510—Miscellaneous rent income.* The rentals assigned to this account which are attributable to commuter service shall be the actual amount derived from the rental of commuter service equipment or other property including property owned by the subsidizer, Conrail, Amtrak or other parties.

(c) *Pass Rider Allowance.* Attributable revenues of the commuter service shall be credited with an allowance for passengers using passes or reduced fare tickets issued by the railroad (or predecessor companies). The parties may continue existing practices for crediting such allowances. In the absence of an agreement, the amount of such credit shall be determined on the basis of currently applicable fares charged revenue commuter passengers.

(d) Conversion Chart for Revenue Accounts.

Revenue Account Title	Previous Account Number	Present Account Number
Freight (Mail portion)	101	101
Passenger	102	102
Passenger Related	103,104,105,108,131	103
Switching	110	104
Water Transfers	113	105
Incidental	132,133,138,141,142,143	110
Joint Facility—Cr.	151	121
Joint Facility—Dr.	152	122
Miscellaneous Rent Income	510	510

§ 1127.7 Avoidable costs of providing service.

(a) *Assignment of Costs.* To the maximum extent practicable, the directly identifiable and common costs assigned to the commuter service shall be developed from a facilities utilization plan and a manpower utilization plan, with the assistance of available

and appropriate cost and accounting records such as time sheets, material requisitions, charge cards, vouchers, and the like. (All accounts shall be separated between labor and material (non-labor) charges.) Otherwise, costs may be assigned to the commuter service in a manner agreed to by the parties. The parties may rely on historical data; conduct special studies; develop their own apportionment formula based on use; or agree on a combination of these methods. Upon request of either party, RSPO will mediate disputes concerning the proper methodology for assigning costs. Any costs which are not assigned under the foregoing procedures shall be assigned in accordance with the methodology prescribed in paragraphs (e) and (f) of this section, subject to the condition that either party may request a special study. The requesting party will be responsible for designing the study and obtaining the other party's approval of the design. The results of the study will be binding on both parties unless they mutually agree to disregard them. Avoidable costs common to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. In assigning costs, it is understood that the moneys charged to a particular function shall include the commuter portion of the passenger expenses, plus the commuter portion of the common expenses for that function. Also, the assignment of common costs associated with some supervision of overhead functions that relate to both freight and passenger activities requires the inclusion of the applicable freight account in the apportionment base.

(b) *Facilities Utilization Plan.* The parties shall develop a facilities utilization plan which identifies and itemizes the road and equipment properties of the railroad used in providing the commuter service and assigns to each property or group of properties the agreed percentage of use devoted to the commuter service. The plan shall also identify those road properties which are avoidable upon discontinuance of the commuter service for the purposes of determining road depreciation, retirement and dismantling charges (§ 1127.7(e)-(f)) and value of road properties (§ 1127.8(b)). The roadway properties and facilities should be divided into areas or segments consisting of stretches of property where operations or use remain fairly constant and pinpointing those places where the operations or use change (e.g., number of tracks change, branch lines enter or diverge, and other similar changes). Properties and equipment normally covered in a facilities utilization plan include: Trackage; signal system; elec-

trification system; interlocking plants; bridges and drawbridges; stations and platforms; rail-highway crossings; yards; power plants; shops; engine-houses and servicing facilities; store-houses; land; rolling stock; and other facilities or equipment. Source data normally includes equipment rosters, track diagrams or maps of the properties in the above categories, and usage measures for each class of facility and equipment by specific facility or segment (e.g., track density charts, train sheets, timetables, blocking records, yarding programs, station workloads, etc.) to determine the percentage of use of facilities or equipment in providing the commuter service.

(c) *Manpower Utilization Plan.* The parties shall also develop a manpower utilization plan which identifies the railroad forces used in providing the commuter service by listing the per-

sons employed according to job title, work location, account and percentage of time devoted to commuter service duties.

(d) *Special studies.* All special studies shall be conducted jointly by the railroad and the subsidizer. The length and frequency of the studies and the standardized measurement procedures utilized in the studies shall be negotiated by the parties. In the event of impasse, either party may submit the dispute to RSPO for resolution and its decision shall be final. The cost of studies which are prescribed by these Standards or which the parties voluntarily agree to perform shall be attributed to the commuter service. The cost of studies performed at the request of only one party shall be borne exclusively by that party and shall not be attributed to the commuter service.

(e) *Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.*

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(1) MAINTENANCE OF WAY AND STRUCTURES			
ADMINISTRATION			
Track	201	XX-16-02 XX-18-02	Various accounts (1127.7(f)(1)(dx)).
Bridges and buildings	201	XX-16-03 XX-19-03	Various accounts (1127.7(f)(1)(x)).
Signals	201	XX-16-04 XX-19-04	Various accounts (1127.7(f)(1)(xi)).
Communications	201	XX-16-05 XX-19-05	Various accounts (1127.7(f)(1)(xiv)).
Other	201	XX-16-06 XX-19-06	Various accounts (1127.7(f)(1)(xii)).
REPAIR AND MAINTENANCE			
Running			
Roadway	202	XX-14-10 XX-17-10	Speed factored gross tons SFGT (1127.7(f)(1)(ii)).
Tunnels and subways	206	XX-14-11 XX-17-11	Ditto.
Bridges and culverts	208, 210	XX-14-12 XX-17-12	Ditto.
Ties	212	21-14-13 21-17-13	Ditto.
Rails	214	21-14-14 21-17-14	Ditto.
Other track material	216	21-14-15 21-17-15	Ditto.
Ballast	218	21-14-16 21-17-16	Ditto.
Track laying and surfacing ..	220	XX-14-17 XX-17-17	Ditto.
Road property damaged	202-220	XX-14-48 XX-17-48	Ditto.
Highway grade crossings	273	XX-14-22 XX-17-22	Ditto.
Switching			
Roadway	202	XX-15-10 XX-18-10	Cars dispatched (1127.7(f)(1)(i)).
Tunnels and subways	206	XX-15-11 XX-18-11	Ditto.
Bridges and culverts	208, 210	XX-15-12 XX-18-12	Ditto.
Ties	212	21-15-13 21-18-13	Ditto.
Rails	214	21-15-14 21-18-14	Ditto.
Other track material	216	21-15-15 21-18-15	Ditto.
Ballast	218	21-15-16 21-18-16	Ditto.
Track laying and surfacing ..	220	XX-15-17 XX-18-17	Ditto.
Road property damaged	202-220	XX-15-48 XX-18-48	Ditto.

(e) Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.—Continued

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
<i>Switching</i>			
Highway grade crossings	273	XX-15-22 XX-18-22	Ditto.
Station and office buildings ..	227	XX-16-23 XX-19-23	Square feet and passenger—on-off count (1127.7(f)(1)(iii)).
Road property damaged—other.	221-265	XX-16-48 XX-19-48	Repair and maintenance—running plus switching (1127.7(f)(1)(viii)).
Signals and interlockers.....	249	XX-14-19 XX-17-19	Train movements (1127.7(f)(1)(iv)).
Running.....		XX-15-19 XX-18-19	Actual.
Switching		XX-16-20 XX-19-20	Various accounts (1127.7(f)(1)(xiii)).
Communications system	247	XX-16-21	Kilowatt hours (1127.7(f)(1)(v)).
Power systems	253, 257	XX-19-21	
Shop buildings.....	235, 253, 257		
Locomotives		XX-16-24 XX-19-24	Labor charges (1127.7(f)(1)(vi)).
Other equipment		XX-16-26 XX-19-26	Ditto.
Locomotives servicing facilities.	231, 233	XX-16-27 XX-19-27	Unit miles, fuel dispensed (1127.7(f)(1)(vii)).
Miscellaneous buildings and structures.	221, 229 239, 265	XX-16-28 XX-19-28	Repair and maintenance—running plus switching (1127.7(f)(1)(viii)).
Roadway machines	269	XX-16-36 XX-19-36	Ditto.
Small tools and supplies	271	XX-16-37 XX-19-37	Ditto.
Snow removal	272	XX-16-38 XX-19-38	Ditto.
Dismantling retired road property.	270, 306		
Running.....		XX-14-39 XX-17-39	Actual.
Switching		XX-15-39 XX-18-39	Actual.
Other.....		XX-16-39 XX-19-39	Actual.
Fringe benefits	277, 457		
Running.....		12-14-00 12-17-00	Various accounts (1127.7(f)(1)(xvi)).
Switching		12-15-00 12-18-00	Ditto.
Other.....		12-16-00 12-19-00	Ditto.
Casualties and insurance	274, 275		
Running.....		52-14-00 52-17-00 53-14-00 53-17-00	Various accounts (1127.7(f)(1)(xv)).
Switching		52-15-00 52-18-00 53-15-00 53-18-00	Ditto.
Other.....		52-16-00 52-19-00 53-16-00 53-19-00	Ditto.
Lease rentals—Dr	542		
Running.....		31-14-00 31-17-00	Actual.
Switching		31-15-00 31-18-00	Actual.
Other.....		31-16-00 31-19-00	Actual.
Lease rentals—Cr	509		
Running.....		32-14-00 32-17-00	Actual.
Switching		32-15-00 32-18-00	Actual.
Other.....		32-16-00 32-19-00	Actual.
Joint facility rents—Dr	541		
Running.....		33-14-00 33-17-00	Agreement or passenger on-off count (1127.6(a)(3))
Switching		33-15-00 33-18-00	Ditto.
Other.....		33-16-00 33-19-00	Ditto.
Joint facility rents—Cr	508		
Running.....		34-14-00 34-17-00	Ditto.
Switching		34-15-00 34-18-00	Ditto.

(e) Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.—Continued

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
<i>Switching</i>			
Other.....		34-16-00 34-19-00	Ditto.
Other rents—Dr	543		
Running.....		35-14-00 35-17-00	Actual.
Switching		35-15-00 35-18-00	Actual.
Other.....		35-16-00 35-19-00	Actual.
Other rents—Cr	510		
Running.....		36-14-00 36-17-00	Actual.
Switching		36-15-00 36-18-00	Actual.
Other.....		36-16-00 36-19-00	Actual.
Depreciation.....	266		
Running.....		62-14-00 62-17-00	Actual—restricted to properties identified in section (1127.8(b)).
Switching		62-15-00 62-18-00	Ditto.
Other	305	62-16-00 62-19-00	Ditto.
Joint facility—Dr	278		
Running.....		37-14-00 37-17-00	Agreement or passenger on-off count (1127.6(a)(3)).
Switching		37-15-00 37-18-00	Ditto.
Other.....		37-16-00 37-19-00	Ditto.
Joint facility—Cr	279		
Running.....		38-14-00 38-17-00	Ditto.
Switching		38-15-00 38-18-00	Ditto.
Other.....		38-16-00 38-19-00	Ditto.
Other.....	267, 274, 281, 282		
Running.....		XX-14-99 XX-17-99	Various accounts (1127.7(f)(1)(xv)) (any amounts in this category which were charged to previous account No. 267 shall be assigned on an actual basis).
Switching		XX-15-99 XX-18-99	Ditto.
Other.....		XX-16-99 XX-19-99	Ditto.
(2) EQUIPMENT LOCOMOTIVES			
Administration	301	XX-24-01 XX-26-01	Various accounts (1127.7(f)(2)(ii)).
Repair and maintenance.....	311	XX-24-41 XX-26-41	Special study and actual (1127.7(f)(2)(i)).
Machinery repair	302	XX-24-40 XX-26-40	Various accounts (1127.7(f)(2)(ii)).
Equipment damaged.....	311	XX-24-48 XX-26-48	Special study and actual (1127.7(f)(2)(i)).
Dismantling retired property.....	306, 329	XX-24-39 XX-26-39	Actual.
Fringe benefits	335, 457	12-24-00 12-26-00	Various accounts (1127.7(f)(2)(iii)).
Other casualties and insurance.....	332, 333	52-24-00 52-26-00 53-24-00 53-26-00	Various accounts (1127.7(f)(2)(ii)). Ditto.
Lease rentals—Dr	537	31-24-00 31-26-00	Actual.
Lease rentals—Cr	504	32-24-00 32-26-00	Actual.
Other rents—Dr	537	35-24-00 35-26-00	Actual.
Other rents—Cr	504	36-24-00 36-26-00	Actual.
Depreciation.....	331	62-24-00 62-26-00	Actual.
Joint facility—Dr	336	37-24-00 37-26-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	337	38-24-00 38-26-00	Ditto.
Repairs billed to others—Cr.: Machinery.....	302	40-24-00 40-26-40	Actual.
Locomotives.....	311	40-24-41 40-26-41	Actual.

(e) Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.—Continued

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(2) EQUIPMENT LOCOMOTIVES			
Road property and equipment damaged.	311, 317, 318, 323, 326, 328	40-24-48 40-26-48	Actual.
Other	332, 339	XX-24-99 XX-26-99	Various accounts (1127.7(f)(2)(ii)).
OTHER EQUIPMENT			
Administration	301	XX-25-01 XX-27-01	Various accounts (1127.7(f)(2)(v)).
Passenger and other revenue equipment.	317	XX-25-45 XX-27-45	Actual.
Computers and data processing systems.	Various accounts	XX-25-46 XX-27-46	Actual.
Machinery	302	XX-25-40 XX-27-40	Various accounts (1127.7(f)(2)(v)).
Work and other non-revenue equipment.	326, 328	XX-25-47 XX-27-47	Various accounts (1127.7(f)(2)(iv)).
Equipment damaged	317, 318, 323, 326, 328	XX-25-48 XX-27-48	Actual.
Dismantling retired property.	306, 329	XX-25-39 XX-27-39	Actual.
Fringe benefits	335, 457	12-25-00 12-27-00	Various accounts (1127.7(f)(2)(vi)).
Other casualties and insurance.	332, 333	52-25-00 52-27-00 53-25-00 53-27-00	Various accounts (1127.7(f)(2)(v)). Ditto.
Lease rentals—Dr	538	31-25-00 31-27-00	Actual.
Lease rentals—Cr	505	32-25-00 32-27-00	Actual.
Joint facility rents—Dr	541	33-25-00 33-27-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility rents—Cr	508	34-25-00 34-27-00	Ditto.
Other rents—Dr	538	35-25-00 35-27-00	Actual.
Other rents—Cr	505	36-25-00 36-27-00	Actual.
Depreciation	331	62-25-00 62-27-00	Actual.
Joint facility—Dr	336	37-25-00 37-27-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	337	38-25-00 38-27-00	Ditto.
Repairs billed to others—Cr, passenger and other revenue equipment.	317	40-25-45 40-27-45	Actual.
Computer and data processing equipment.	Various accounts	40-25-46 40-27-46	Actual.
Work and other nonrevenue equipment.	326, 328	40-25-47 40-27-47	Various accounts (1127.7(f)(2)(iv)).
Road property and equipment damaged.	317, 318, 323, 326, 328	40-25-48 40-27-48	Actual.
Other	330, 332, 339	XX-25-99 XX-27-99	Actual/various accounts (1127.7(f)(2)(vii)).
(3) Transportation train operations			
Administration	371	XX-41-01 XX-51-01	Various accounts (1127.7(f)(3)(xi)).
Engine crews	392, 402	XX-41-56 XX-51-56	Actual, cars dispatched (1127.7(f)(3)(i)).
Train crews	401, 402, 403	XX-41-57 XX-51-57	Ditto.
Dispatching trains	372	XX-41-58 XX-51-58	Train hours (1127.7(f)(3)(ii)).
Operating signals and interlockers.	404	XX-41-59 XX-51-59	Train movements (1127.7(f)(3)(iii)).
Operating drawbridges	406	XX-41-60 XX-51-60	Ditto.
Highway crossing protection.	405	XX-41-61 XX-51-61	Ditto.
Train inspection and lubrication.	311, 402	XX-41-62 XX-51-62	Cars dispatched (1127.7(f)(3)(iv)).
Locomotive fuel	394	XX-41-67 XX-51-67	Actual.
Electric power purchased/produced for motive power.	395, 396, 445	XX-41-68 XX-51-68	Actual-weighted (1127.7(f)(3)(v)).
Servicing locomotives	400	XX-41-69 XX-51-69	Locomotive units (1127.7(f)(3)(vi)).
Freight lost or damaged—solely related.	418, 419	51-41-00 51-51-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Clearing wrecks	415	XX-41-63 XX-51-63	Ditto.

(e) Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.—Continued

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(3) Transportation			
train operations			
Fringe benefits	409, 457	12-41-00 12-51-00	Various accounts (1127.7(f)(3)(viii)).
Other casualties and insurance.	414, 416, 417, 420	52-41-00 52-51-00 53-41-00 53-51-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	412	37-41-00 37-51-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	413	38-41-00 38-51-00	Ditto.
Other	402, 403, 411, 420, 441	XX-41-99 XX-51-99	Actual.
YARD OPERATIONS			
Administration	371	XX-42-01 XX-52-01	Various accounts (1127.7(f)(3)(xi)).
Switch crews	378, 380, 389	XX-42-64 XX-52-64	Unit hours, special study (1127.7(f)(3)(ix)).
Controlling operations	377, 389	XX-42-65 XX-52-65	Ditto.
Yard and terminal clerical ...	377, 389	XX-42-66 XX-52-66	Ditto.
Operating switches, signals, retarders, and humps.	379, 389	XX-42-59 XX-52-59	Ditto.
Locomotive fuel	382	XX-42-67 XX-52-67	Ditto.
Electric power purchased/ produced for motive power.	383, 384, 445	XX-42-68 XX-52-68	Ditto.
Servicing locomotives	388	XX-42-69 XX-52-69	Ditto.
Freight lost or damaged solely related.	418, 419	51-42-00 51-52-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Clearing wrecks	415	XX-42-63 XX-52-63	Ditto.
Fringe benefits	409, 457	12-42-00 12-52-00	Various accounts (1127.7(f)(3)(viii)).
Other casualties and insurance.	414, 416, 420	52-42-00 52-52-00 53-42-00 53-52-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	390, 412	37-42-00 37-52-00	Agreement or passenger on-off count (1127.6(a)(3)).
YARD OPERATIONS			
Joint facility—Cr	391, 413	38-42-00 38-52-00	Ditto.
Other	411, 420	XX-42-99 XX-52-99	Actual.
TRAIN AND YARD OPERATIONS COMMON			
Cleaning car interiors	402	XX-43-70 XX-53-70	Actual.
Freight lost or damaged—all other.	418, 419	51-43-00 51-53-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Fringe benefits	409	12-43-00 12-53-00	Various accounts (1127.7(f)(3)(viii)).
ADMINISTRATIVE SUPPORT OPERATIONS			
Administration	371	XX-45-01 XX-55-01	Various accounts (1127.7(f)(3)(xi)).
Employees performing clerical and accounting functions.	373, 376	XX-45-76 XX-55-76	Various accounts (1127.7(f)(3)(x)).
Communication systems operations.	373, 376, 407	XX-45-77 XX-55-77	Administrative accounts (1127.7(f)(3)(xii)).
Loss and damage claims processing.	418, 419	XX-45-78 XX-55-78	Responsibility/reserve account (1127.7(f)(3)(vii)).
Fringe benefits	409, 457	12-45-00 12-55-00	Various accounts (1127.7(f)(3)(viii)).
Casualties and insurance	414, 416, 420	52-45-00 52-55-00 53-45-00 53-55-00	Responsibility/reserve account (1127.7(f)(3)(vii)).
Joint facility—Dr	412, 447	37-45-00 37-55-00	Agreement or passenger on-off count (1127.6(a)(3)).
Joint facility—Cr	413, 448	38-45-00 38-55-00	Ditto.
Other	411, 420	XX-45-99 XX-55-99	Actual.
(4) GENERAL AND ADMINISTRATIVE			
Officers—General	351, 451,	XX-62-01	Actual.
Superintendence.	452, 453	XX-63-01	

(e) Conversion Chart and Assignment Basis of Expense Accounts to Commuter Service.—Continued

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to commuter service
(4) GENERAL AND ADMINISTRATIVE			
Accounting, auditing and finance.	451, 452	XX-62-86 XX-63-86	Actual. ¹
Management services and data processing.	451, 452	XX-62-87 XX-63-87	Actual. ¹
Marketing.....	352	XX-62-88 XX-63-88	Actual. ¹
Sales.....	352	XX-62-89 XX-63-89	Actual. ¹
Personnel and labor relations.	451, 452	XX-62-91 XX-63-91	Actual. ¹
Legal and secretarial.....	274, 332, 420, 452, 454	XX-62-92 XX-63-92	Actual. ¹
Public relations and advertising.	353, 354	XX-62-93 XX-63-93	Actual. ¹
Research and Development..	Various Accounts	XX-62-94 XX-63-94	Actual. ¹
Other.....	351, 360, 451, 452, 453, 460	XX-62-99 XX-63-99	Actual. ¹
Casualties and insurance.....	357, 455	52-62-00 52-63-00 53-62-00 53-63-00	Actual. ¹
Writedown of uncollectible accounts.	Various Accounts	63-62-00 63-63-00	Actual. ¹
Fringe benefits.....	359, 456, 457	12-62-00 12-63-00	Various accounts (1127.7(f)(4)).
Property taxes.....	532	64-62-00 64-63-00	Actual—as determined under section 1127.8(b).
Other taxes except on corporate income or payrolls.	532	65-62-00 65-63-00	Actual.
Joint facility—Dr.....	461	37-62-00 37-63-00	Agreement or passenger on-off count (1127.6)(a)(3)).
Joint facility—Cr.....	462	38-62-00 38-63-00	Ditto.

¹These costs may include the actual expenses incurred in administering the subsidy program. There shall be no apportionment of common costs charged to these accounts.

(f) *Apportionment Rules For Assigning Common Costs to Commuter Service.* The accounts specified under § 1127.7(e) which have an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(1) *Maintenance of Way and Structures—(i) Repair and Maintenance-Switching.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service cars dispatched in the designated area to the total cars dispatched in the designated area.

(ii) *Repair and Maintenance-Running.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service

Speed Factored Gross Tons (SFGT) for the designated area to the total SFGT for all traffic in the designated area. The commuter service SFGT shall be derived by subtracting the SFGT for freight and/or intercity passenger from the total SFGT for all traffic. The SFGT shall be calculated in accordance with the formula set forth in Appendix III to this part.

(iii) *Station and Office Buildings.* The common costs assigned to these accounts shall be first apportioned on the ratio of total square feet devoted to passenger service to the total square feet used in the facility. The passenger portion shall then be apportioned on the ratio of the commuter service on-off passenger count (including pass riders) in the designated area

to the total on-off passenger count (including pass riders) in the designated area.

(iv) *Signals and Interlockers.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(v) *Power Systems.* The common costs assigned to these accounts shall be apportioned on the ratio of the kilowatt hours consumed by the commuter service to the total kilowatt hours consumed by all services in the designated area.

(vi) *Shop Buildings.* The common costs assigned to these accounts shall be apportioned on the ratio of the labor charges expended servicing commuter service equipment in the designated area to the railroad's total labor charges expended servicing all equipment in the designated area.

(vii) *Locomotive Servicing Facilities.* The common costs assigned to fuel stations shall be kept separate from the common costs assigned to the balance of the locomotive servicing facilities. The common costs assigned to fuel stations shall be apportioned on the ratio of the amount of fuel dispensed in commuter service to the total amount of fuel dispensed for all services using these facilities. The common costs assigned to the balance of the locomotive servicing facilities shall be apportioned on the ratio of the locomotive unit miles (diesel and electric) generated from commuter service using these facilities in the designated area to the railroad's total locomotive unit miles in the designated area (diesel and electric) for all services.

(viii) *Road Property Damaged—Other; Miscellaneous Buildings and Structures.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-11-10	XX-14-10	XX-17-10
XX-12-10	XX-15-10	XX-18-10
XX-11-11	XX-14-11	XX-17-11
XX-12-11	XX-15-11	XX-18-11
XX-11-12	XX-14-12	XX-17-12
XX-12-12	XX-15-12	XX-18-12
21-11-13	21-14-13	21-17-13
21-12-13	21-15-13	21-18-13
21-11-14	21-14-14	21-17-14

ration between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefits costs where it can be clearly demonstrated that the cost was commuter service related.

(vii) *Other.* Equipment retirements shall be assigned to commuter service on an actual basis. The balance of the common costs assigned to these accounts shall be apportioned on the ratio of the amounts assigned to commuter service to the railroad's total in the designated area for the following accounts:

XX-23-43		
XX-23-44		
XX-23-45	XX-25-45	XX-27-45
XX-23-46	XX-25-46	XX-27-46
XX-23-47	XX-25-47	XX-27-47
XX-23-48	XX-25-48	XX-27-48
37-23-00	37-25-00	37-27-00
38-23-00	38-25-00	38-27-00
XX-23-39	XX-25-39	XX-27-39
XX-22-42		

(3) *Transportation—(i) Engine Crews; Train Crews.* These accounts shall be separated between salary and wages and train supplies and expenses. The salary and wage portion shall be assigned to commuter service on an actual basis. The common costs assigned to these accounts for train supplies and expenses shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(ii) *Dispatching trains.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter train hours in the designated area to the total train hours in the designated area.

(iii) *Operating Signals and Interlockers; Operating Drawbridges; Highway Crossing Protection.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(iv) *Train Inspection and Lubrication.* The common costs assigned to these accounts shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(v) *Electric Power Purchased/Produced for Motive Power.* The cost of

kilowatt hours consumed for commuter service shall be based on the kilowatt hours developed for commuter service in § 1127.7(f)(1)(v) weighed to reflect the peak period power demands, i.e., time of day and volume of power demanded. A special study may be conducted to develop the peak power demand factor.

(vi) *Servicing Locomotives.* The common costs assigned to these accounts shall be apportioned on the ratio of the total locomotive units (road) serviced in commuter service in the designated area to the railroad's total locomotive units (road) serviced in the designated area.

(vii) *Freight Lost or Damaged—Society Related; Clearing Wrecks; Other Casualties and Insurance.* The subsidizers shall be responsible for any costs incurred under these accounts resulting from the operation of the commuter service. The railroad shall, if the subsidizer agrees, establish a reserve for the purpose of holding the subsidizer harmless from any liabilities under these accounts arising out of the operation of commuter services on its properties, and each commuter service participating in the reserve shall bear a proportion of the costs of the reserve equal to its proportion of the total passenger miles (including non-revenue passenger miles) generated by participating services. The costs assigned to these accounts for commuter service insurance shall be determined by ascertaining from the railroad's underwriters: (A) The difference in the current premium if commuter service were not operated and (B) the additional premium required to hold the railroad and the subsidizers harmless from any liability. Such amounts shall be apportioned between the several commuter services operated by the railroad on the basis of the relative numbers of passenger miles (including pass riders).

(viii) *Fringe Benefits.* Fringe benefits shall be separated between pensions and Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facility for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(ix) *Switch Crews; Controlling Operations; Yard and Terminal Clerical; Operating Switches, Signals, Retarders, and Humps; Locomotive Fuel;*

Electric Power Purchased/Produced For Motive Power; Servicing Locomotives. A special study shall be conducted to determine the ratio of the commuter service (diesel, electric) yard locomotive unit hours in the designated area to the railroad's total (diesel, electric) yard locomotive unit hours in the designated area. The common costs assigned to these accounts shall be the amounts in the railroad's accounts for the designated area multiplied by the ratio determined from the study. For this purpose, the term "locomotive" shall include motor cars. In conducting such a study, the railroad should recognize the variances of: (A) Weekend versus weekday demand; (B) required yard crew manning to perform the switching services for various users; and (C) the effect of peak service on yard manning.

(x) *Employees Performing Clerical and Accounting Functions; Communication System Operations.* (A) The common costs assigned to these accounts, exclusive of material, shall be subdivided into 4 categories: (1) Ticket sales and service; (2) other station costs; (3) station master; and (4) mail and baggage.

(B) The common costs in these subaccounts, exclusive of material, shall be apportioned on the ratio of commuter service units in the designated area to the total units in the designated area for the respective units: (1) Weighted ticket sales; (2) passenger on-off count (including pass riders); (3) trains stopping at stations in the designated area; and (4) units of mail and baggage handled. The common material costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in these accounts exclusive of material determined above to the railroad's total for these accounts in the designated area.

(xi) *Administration.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in all other transportation accounts in each subcategory except Fringe Benefits and Communication Systems Operations to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(xii) *Communication System Operations.* The common costs assigned to these accounts shall be apportioned on the ratio of the total commuter service amounts in the Administration accounts section (§ 1127.7(f)(3)(xi)) assigned to commuter service to the railroad's total for these accounts (including the applicable freight accounts) in the designated area.

(4) *General and Administrative—Fringe Benefits.* Fringe benefits shall be separated between pensions and

Health and Welfare benefits with a further separation between running, switching and other. The costs assigned to these accounts for pensions shall be the actual costs that are directly attributable to commuter service. Health and Welfare benefits shall be assigned to commuter service on the ratio of the commuter service amounts in the respective salary and wage accounts to the railroad's system total for these accounts. Expenses for entertainment facilities for personal use shall only be included in Health and Welfare benefit costs where it can be clearly demonstrated that the cost was commuter service related.

(g) *Performance Standards—Penalties and Incentives.* The subsidy agreements may include reasonable provisions as agreed by the parties for penalties for service inferior to stipulated performance standards and incentive payments for superior performance. Penalties withheld from subsidy payments by the subsidizer under such agreements shall be treated as reductions of avoidable costs and incentive payments shall be treated as additions to avoidable costs.

§ 1127.8 Valuation of rail properties.

The value of rail properties on which a reasonable return is allowed shall consist of:

(a) The net book value of equipment furnished by the contracting carrier for commuter service, after deduction of accrued depreciation;

(b) The net book value of those roadway and structures properties which are used in commuter services and which could be disposed of if commuter service were discontinued. Such net book value shall include the net liquidation value of the properties as of April 1, 1976, determined for their highest and best use for other than rail transportation purposes, plus the value of additions and betterments after that date for commuter service, less depreciation accrued from that date and all costs of modifying remaining properties so that noncommuter operations can be continued over them. It shall not include the value of properties owned by the public bodies; of properties owned by the trustees of debtor estates if such properties are entitled to a return computed under 49 CFR 1125.9; and

(c) If the book values of road or equipment property are adjusted upward or downward as a result of final orders of the special court, such adjusted values shall be reflected in future subsidy payments, but without retroactive effect.

§ 1127.9 Reasonable return on the value of the properties.

The reasonable return shall be 7.5 percent per annum on the sum of the

three elements of the investment base computed in accordance with § 1127.8.

§ 1127.10 Additional rail passenger service.

(a) As used in this section, the term "additional rail passenger service" means rail passenger service other than rail passenger service provided pursuant to sections 304(e) (2) and (4) of the 3R Act, as amended. It includes extended or expanded service and modified routings, which is to be provided over rail properties conveyed to Conrail pursuant to Section 303(b)(1) of the 3R Act, as amended, or over rail properties contiguous to properties conveyed to Amtrak, or any other rail properties contiguous to properties to which a State (or local or regional transportation authority) has obtained access.

(b) If a State (or a local or regional transportation authority in the region offers to provide payment for the provision of additional rail passenger service, Conrail shall undertake to provide the additional service consistent with the discontinuance provisions contained in section 304(e)(2) of the 3R Act, as amended.

(c) An offer to provide payment for the provision of additional rail service shall be made in accordance with section 304(c)(2)(A) of the 3R Act, as amended, and pursuant to §§ 1127.6-1127.9 of these regulations. The offer shall be designed to avoid any additional costs to Conrail arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification.

(d) The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties other than those designated for conveyance to Amtrak pursuant to section 206(c)(1)(C) and 206(c)(1)(D) of the 3R Act, as amended, and to Conrail pursuant to section 303(b)(1) of the 3R Act, as amended, necessary to provide the additional rail passenger service. The State shall also demonstrate that it has completed or will complete prior to the inception of the additional rail passenger service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail service, including rail freight service. Assurance is required that the additional service will not detract from the level and quality of existing rail passenger and freight service.

(e) Conrail shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

APPENDIX I—SUBSIDY ESTIMATE.

The following information is required to be furnished under § 1127.3(b) in accordance with the methodology set forth in §§ 1127.3 through 1127.9. The base period data shall be shown for each item.

REVENUES ATTRIBUTABLE FOR BASE PERIOD

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment
6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
 - a. Book Value of Equipment
 - b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on value (line 11 times line 12)

ESTIMATED SUBSIDY PAYMENT

14. Subsidy Estimate (line 3 minus lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Estimated Emergency Operating Assistance from the Secretary (line 14 minus line 15)

TRAFFIC AND OPERATING DATA

1. Numbers of Passengers Carried
2. Total Car Miles

APPENDIX II—FINANCIAL STATUS REPORT

A railroad entering into a subsidy agreement shall compile the information prescribed below in accordance with the standards set forth in §§ 1127.3 through 1127.9. The actual data for the period to date and a projection to the end of the subsidy period shall be shown for each item.

REVENUES ATTRIBUTABLE FOR ACTUAL AND PROJECTED

1. Passenger
2. All Other
3. Total Revenues Attributable (lines 1 plus 2)

AVOIDABLE COSTS FOR

4. Maintenance of Way and Structures
5. Maintenance of Equipment

6. Transportation
7. General and Administrative
8. Casualty Reserve Account
9. Performance Standards
10. Total Avoidable Costs (lines 4 through 9)

RETURN ON VALUE FOR

11. Valuation of Property (lines 11a plus 11b)
 - a. Book Value of Equipment
 - b. Book Value of Roadway and Structures
12. Rate of Return
13. Total Return on Value (line 11 times line 12)

SUBSIDY PAYMENT

14. Subsidy Payment (line 3 minus

- lines 10 and 13)
15. Financial Assistance from Subsidizer
16. Emergency Operating Assistance from the Secretary (line 14 minus 15)

TRAFFIC AND OPERATING DATA

1. Number of Passengers Carried
2. Total Car Miles

APPENDIX III—SPEED FACTORED GROSS TONS FORMULA (SFGT)

The following formula is required to calculate the SFGT to be used under § 1127.7(f)(1)(B) of this part.
All Track and Roadbed Maintenance:

$$SFGT = Y(.670 + .910 N) + N \left[1.840 + .870 \sqrt{GT} + .058 GTF + .029 GTP + .048 J \right] \left[\frac{GTF}{600} \left(1 + \frac{VF}{6000} \right)^2 + \frac{GTP}{750} \left(1 + \frac{VP}{9375} \right)^2 \right]$$

or in cases where freight speeds are equal to or greater than 80 percent of passenger speeds, the freight and passengers terms may be combined as shown below.

$$SFGT = Y(.670 + .910 N) + N \left[1.840 + .870 \sqrt{GT} + .058 GTF + .029 GTP + .048 J \right] \left[GT \left(1 + \frac{V}{600} + \frac{V^2}{6000} \right) \right]$$

where:

GT=Total gross tons of traffic (in millions) per track mile per year.
GTF=Freight traffic gross tons (in millions) per track mile per year.
GTP=Passenger traffic gross tons (in millions) per track mile per year.

N=Number of tracks per route mile.¹

V=Speed factor (the larger of freight speed or 0.8 times passenger speed).

VF=Freight speed.

VP=Passenger speed.

J=1 for welded rail.

1.5 for bolted rail.

Y = As shown below

FRA Class of Tracks and Type of Operation	Value of Y		
	Main Line	Branch Line	Yard & Switch
Class 1,2,3; freight only up to 10 MGT per mile per year	1.00	0.56	0.14
Class 1,2; passenger, or Class 1,2,3; freight more than 10 MGT per mile per year	1.12	0.66	-
Class 3; passenger, or Class 4,5,6; all traffic	1.15	0.69	-

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

[FR Doc. 79-8099 Filed 3-16-79; 8:45 am]

¹In calculating total SFGT, the value of N shall reflect the total number of tracks presently in place. Any tracks constituting present excess capacity shall be included in this value of N.

In calculating SFGT for freight and/or intercity passenger, the value of N shall re-

fect the total number of tracks less the number of tracks (if any) which could be eliminated if commuter service were discontinued. Any tracks constituting present excess capacity shall be included in the value of N when computing SFGT for freight and/or intercity passenger.

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6450-01-M]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

[10 CFR Part 205]

IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

Issuance of Proposed Decision and Order for Public Comment

CROSS REFERENCE: For a document containing a Proposed Decision and Order of the Department of Energy and Special Refund Procedures relating to the Gulf Oil Company see the Table of Contents in this issue.

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 13]

[Docket No. 18884; Notice No. 79-61]

INVESTIGATION AND ENFORCEMENT PROCEDURES

Procedures for Filing Complaints, Issuing Certain Orders and Conducting Formal Fact Finding Investigations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: To enable the FAA to carry out its enforcement responsibilities more effectively, this notice proposes rules and procedures for the filing of formal complaints, the issuance of certain orders of denial, cease and desist orders and orders of compliance, and the conduct of formal fact finding investigation under the Federal Aviation Act of 1958, the Airport and Airway Development Act of 1970, and the Hazardous Materials Transportation Act. This notice also proposes to codify existing procedures and provides the public an opportunity to participate in that codification.

DATE: Comments must be received on or before May 24, 1979.

ADDRESSES: Send comments on the proposals, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket

(AGC-24), 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Jonathan Howe, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C., Telephone (202) 426-3775.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before May 24, 1979, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE ENFORCEMENT PROCESS

As a result of the passage of the Airline Deregulation Act of 1978 (Pub. L. 95-504, 92 Stat. 1705), the FAA has placed added importance on its responsibility to assure that the laws

under which it operates are strictly enforced. Since this NPRM proposes a substantial redefinition and condensation of investigative and enforcement procedures by the FAA, a brief statement of the objectives of this process is appropriate.

Implicit in the authority to issue regulations is the responsibility to enforce them. While compliance with the safety standards established under Title VI of the Federal Aviation Act continues to be the principal focus of the agency's enforcement program, that program today extends to requirements imposed by Titles III and V of that Act, the Hazardous Materials Transportation Act, and the Airport and Airway Development Act.

The types of actions possible under these statutes are set out in present Part 13 of the Federal Aviation Regulations (FARs). They span a range from Warning Notices to summary aircraft seizure and substantial civil penalties. The procedure followed by the FAA is essentially that followed by any law enforcement agency vested with authority to take civil actions. Criminal sanctions are provided by statute for certain violations; however, these actions are undertaken by the Department of Justice.

Except in the case of administrative actions taken as provided for in Subpart B of this part, an investigation is initiated to determine whether a basis exists for taking legal action. Ordinarily, no final legal disposition within the meaning of the Administrative Procedure Act is taken without notice and an opportunity to be heard. Important exceptions, however, are the provisions of sections 903 and 1005 of the Federal Aviation Act (49 U.S.C. 1473 and 1485) which allow for summary seizure of aircraft and emergency orders without prior notice or hearing.

In accordance with section 901(a)(2) of the Federal Aviation Act (49 U.S.C. 1471(a)(2)), any civil penalty action may be compromised by the Administrator, and no administrative adjudications are made. A final adjudication on the merits is possible only after suit is brought in the United States District Court. Civil penalties imposed pursuant to the Hazardous Materials Transportation Act are administratively adjudicated since both that Act and the regulations provide for notice and an opportunity to be heard. All other orders and requirements imposed pursuant to these statutes are judicially

enforceable and subject to judicial review.

The proposals contained in this Notice will assure that all enforcement actions taken by the FAA fit within the process described above. They will also serve to codify and standardize existing procedures which are used but are not set out in Part 13. Except in emergency actions and cases involving aircraft seizure, no person will be subject to a final order by the FAA without first being provided notice and an opportunity for hearing either before the FAA or, in the case of actions pursuant to sections 602 and 609 of the Federal Aviation Act (49 U.S.C. 1422 and 1429), before the National Transportation Safety Board. Hearings before the FAA will be in accordance with Subpart D of Part 13.

As noted below, no significant changes in the investigative process are contemplated. The formal fact-finding investigation proposed in new Subpart F essentially codifies existing practices and is not expected to be used frequently. It should be emphasized, however, that these procedures are simply a part of the FAA's general investigative powers and in no way should be construed as an "opportunity to be heard" as previously discussed.

FORMAL COMPLAINTS

Proposed § 13.12 establishes procedures for processing complaints alleging violations of any provision of a law, regulation, or order for which the Administrator of the FAA exercises enforcement responsibility. These procedures will also facilitate enforcement of future amendments to Part 152—Airport Aid Program which will be issued pursuant to the requirements of section 30 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1730). This section provides that no person shall be excluded on the grounds of race, creed, color, national origin, or sex from participating in any project for airport development, airport master planning, or airport system planning conducted with funds received from a grant made under the Airport Aid Program. Part 13 procedures will be utilized for certain investigative and sanction proceedings initiated by the FAA under Part 152.

The proposed amendment will assist persons who file formal complaints for orders or other enforcement actions by specifying: (1) A central location for the filing of complaints, (2) the information that must be submitted with the complaint, and (3) the procedures for processing the complaint. The procedures provide for notice to the person complained of; investigation of the allegations set forth in the complaint, including initiation of Sub-

part F fact-finding investigative procedures, as appropriate; and the initiation of enforcement action if the investigation substantiates the allegations set forth in the complaint.

Any appeal to the Administrator from a Hearing Officer's decision and order will be decided on the record of the FAA hearing and will not involve a trial *de novo*. The Administrator's decision and order is both an "adjudication" and "final disposition" within the meaning of section 551 of the Administrative Procedure Act and is therefore subject to judicial review in accordance with applicable statutes.

Provision has been made in proposed § 13.13 for the issuance of consent orders in any legal enforcement action taken under Subpart C as presently provided for in § 13.77 relating to orders of compliance under the Hazardous Materials Transportation Act.

ORDERS OF COMPLIANCE, CEASE AND DESIST ORDERS, ORDERS OF DENIAL AND OTHER ORDERS

Although Subpart E of Part 13 sets forth procedures for the issuance of orders of compliance under the Hazardous Materials Transportation Act, it does not presently contain procedures for the issuance of orders of compliance under the Federal Aviation Act of 1958 or the Airport and Airway Development Act of 1970. Accordingly, § 13.20 would establish procedures for the issuance of orders of compliance with the provisions of those acts and any orders or regulations issued thereunder.

The FAA also issues other orders which meet the "final disposition" test discussed above. Examples of these include orders to cease and desist, orders of denial, and orders under section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)). Since no statutory provision for an "opportunity to be heard" exists for orders of this type (except for orders of denial of airman certificates issued under section 602 of the Federal Aviation Act), the potential exists for administratively final orders to be issued without basic "due process" protections. Equally important is the requirement imposed by section 1006 of the Federal Aviation Act (49 U.S.C. 1486) that such orders are subject to judicial review by the Courts of Appeals of the United States or the U.S. Court of Appeals for the District of Columbia. As a result, cases have arisen where the administrative record before these Courts is not sufficient to dispose of the matter properly. This notice therefore proposes to revise § 13.20 to provide notice and an opportunity for a hearing in accordance with Subpart D of this part.

It also proposes to expand the provisions of this section to orders other than to cease and desist. The limited

scope of present § 13.20, which is confined to emergencies under section 1005(a) of the Federal Aviation Act (49 U.S.C. 1485(a)), is no longer a proper reflection of the range of administratively final orders issued by the FAA. Furthermore, the authority conferred by section 1005(a) is not available for proceedings arising under the Airport and Airway Development Act of 1970. The procedural steps for issuing orders under this section are substantially the same as those initiated through the complaint process of proposed § 13.11.

It should be noted that orders issued pursuant to sections 602 and 609 of the Federal Aviation Act (49 U.S.C. 1422 and 1429) are excluded. This is because those sections specifically provide for a review by or an appeal to the National Transportation Safety Board prior to judicial review under section 1006. These sections deal with the issuance of airman certificates (section 602) and the amendment, suspension, and revocation of various certificates issued by the FAA (section 609). The National Transportation Safety Board's rules of practice for such proceedings may be found in 49 CFR Part 821.

FACT-FINDING INVESTIGATIONS

The FAA has broad authority under the statutes it administers to conduct investigations. The fundamental purpose of these investigations is to gather facts necessary to determine whether some formal action under these laws should be taken. The possible actions include enforcement or rulemaking and adjudication as defined by section 551 of the Administrative Procedure Act (5 U.S.C. 551). While the FAA relies primarily on informal investigative processes designed to obtain information from all segments of the public, the need occasionally arises for a more formal proceeding. The need arises primarily when the subject matter of the investigation is extremely controversial or persons are reluctant to provide information or otherwise cooperate. In such cases it is difficult to obtain facts without the taking of sworn testimony and the subpoenaing of records.

Under the laws set out above, the Administrator is empowered to conduct public hearings or investigations, take evidence and depositions and issue subpoenas. The Administrator may also require the production of documents, records, and property. In addition, the Administrator may compel testimony pursuant to the provisions of section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004). The Federal Aviation Regulations presently do not expressly implement these powers and the agency has in the past relied on

the language of the statutes themselves in the conduct of such investigations. This has frequently resulted in "ad hoc" proceedings. The lack of uniform, published procedures often makes it difficult for parties to such an investigation to know what is required of them.

While the FAA does not anticipate any appreciable change from the present number of formal investigations, adoption of these regulations will both improve and simplify existing procedures. These formal fact-finding investigations are not adjudicatory in nature and are not proceedings in which a decision or order can be issued against any person. Rather, the proceedings are intended to determine whether sufficient facts exist to warrant further action. Likewise, these are not adversary proceedings in the common law sense, although elements of fundamental due process are provided. To emphasize the distinction between proceedings under this subpart and hearings held pursuant to Subpart D of Part 13, the official authorized to conduct these investigations is designated as the "Presiding Officer" as distinct from the "Hearing Officer" in the latter regulation. This terminology is also consistent with the language appearing in Subpart E of Part 77 of the Federal Aviation Regulations.

New §§ 13.103(b) and 13.125 would allow investigative depositions as provided for in section 1004(e) of the Federal Aviation Act (49 U.S.C. 1484(e)) as a part of formal investigations conducted under proposed Subpart F. However, nothing in these sections should be construed as limiting the authority of duly designated persons to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal fact-finding investigation as provided for in section 1004(a).

The authority to conduct formal fact-finding investigations is delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel. The Aeronautical Center Counsel is also delegated such authority for the purpose of investigating alleged violations of Title V of the Act, or any regulations issued under it. The investigation is initiated by the issuance of an order of investigation and the procedures are intended to provide an expeditious and efficient handling of investigations with a minimum of inconvenience to persons who may be required to appear and testify. Upon completion of the investigation, the Presiding Officer will issue a report of the investigation, including a summary of principal conclusions. If the facts indicate no action is warranted, the investigative files are closed. Where action is initiated, the Administrator proceeds

in accordance with the prescribed procedures under the Federal Aviation Act of 1958, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, or the Administrative Procedure Act as applicable, and the rules and regulations issued thereunder.

USE OF RECORDS, DOCUMENTS AND REPORTS

The Federal Aviation Regulations contain many recordkeeping and reporting requirements. These records and reports are necessary to assure safety in air transportation and compliance with the laws, regulations and orders for which the Administrator of the FAA has enforcement responsibility.

The record-keeping and reporting requirements in the regulations have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942. The records and reports are routinely used in fact-finding investigations and enforcement proceedings. The only exception to such use provided for in the current regulations is in § 121.359(e), which states that the Administrator does not use information obtained from cockpit voice recorders in any civil penalty or certificate action. In response to frequent questions concerning the use in enforcement actions of records and reports which are required by the FARs, this notice proposes to add a new § 13.5 to specifically provide that any record, document or report required to be maintained, exhibited or submitted to the Administrator (1) may be used in any investigation conducted by the Administrator and (2), except to the extent such use may be specifically limited or prohibited by the section which imposes the requirement, may be used in any civil penalty action, certificate action, or other legal proceeding.

OTHER MINOR AND EDITORIAL CHANGES

The title to § 13.21 would be changed to read "Military Personnel" to reflect more correctly the substance of the section, and § 13.67 would be redesignated § 13.19a and transferred from Subpart D to Subpart C to include it with the other enforcement actions provided for in that subpart.

Section 13.59(b) would be changed to place the burden of proof on the person seeking review of an order of denial. This comports with the standard set by 49 CFR 821.25 for review of denials under section 602 of the Federal Aviation Act.

Current § 13.75 would be amended by deleting paragraphs (c), (d) and (e) since those requirements are more appropriate for filing a formal answer under Subpart D hearing procedures rather than submitting a written reply

to a proposed order. In addition, paragraph (f) of § 13.75 would be redesignated as paragraph (c) and the phrase "and contest the allegations" deleted, since a person may choose to contest the allegations by filing a written reply without requesting a hearing. By making these changes, § 13.75 would be consistent with proposed §§ 13.11 and 13.20.

Section 13.83(a) would be amended by making it clear that either party to a hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the Order. This change would also be consistent with proposed §§ 13.11 and 13.20.

In addition, § 13.3(b) proposes to include language which would delegate the Administrator's authority to investigate matters (those not including the use of the compulsory processes of sections 313 and 1004(a) of the Federal Aviation Act and section 109 of the Hazardous Materials Transportation Act) to authorize employees of the various services and offices of the FAA. This amendment would simply conform the rule to the way in which agency investigations proceed in the usual course of business.

ECONOMIC IMPACT OF PROPOSED REGULATION

The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044, and as implemented by interim Department of Transportation guidelines (43 F.R. 9582; March 8, 1978). However, interested persons are invited to comment on the economic impact of the proposed rule by submitting such written data, views or arguments as they may desire.

THE PROPOSED RULE

Accordingly, the Federal Aviation Administration proposes to amend Part 13 of the Federal Aviation Regulations (14 CFR Part 13) as follows:

1. By Revising the title of Part 13 to read:

PART 13—INVESTIGATION AND ENFORCEMENT PROCEDURES

2. By revising the contents of Subpart A to read as follows:

Subpart A—Investigative Procedures

- Sec.
13.1 Reports of violations.
13.3 Investigations.
13.5 Records, documents and reports.

AUTHORITY: Secs. 302(f), 303(d), 313 (a) and (c), 1002 (a), (b) and (c), and 1004 through 1009, Federal Aviation Act of 1958 (49 U.S.C. 1342(f), 1344(d), 1354 (a) and (c),

1482 (a), (b) and (c), and 1484 through 1489; secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)) secs. 27 and 30, Airport and Airway Development Act of 1970 (49 U.S.C. 1727 and 1730); sec. 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004); and secs. 1.47 (f) and (k), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).

3. By revising Subpart A to read as follows:

Subpart A—Investigative Procedures

§ 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, or the Airport and Airway Development Act of 1970, or of any regulation or order issued under those acts should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take.

§ 13.3 Investigations.

(a) Under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and the Regulations of the Office of the Secretary of Transportation (49 CFR Parts 1 et seq.), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958 (except Title V), the Airport and Airway Development Act of 1970, or the Hazardous Materials Transportation Act, or any regulation or order issued under these Acts, the Administrator's authority has been delegated to the various services and offices for matters within their respective areas for all routine investigations. When the compulsory processes of sections 313 and 1004 (49 U.S.C. 1354 and 1484) of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808) are invoked, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel.

For the purpose of investigating alleged violations of Title V of the Federal Aviation Act, or any regulation or order issued under it, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, and the Aeronautical Center Counsel.

(c) In conducting formal investigations, the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, each Regional Counsel, and the Aeronautical Center Counsel may issue an order of investigation in accordance with Subpart F of this part.

§ 13.5 Records, documents and reports.

Each record, document and report that the Federal Aviation Regulations require to be maintained, exhibited or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent such use may be specifically limited or prohibited by the section which imposes the requirement, such records, documents and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

4. By revising the contents of Subpart C to read as follows:

Subpart C—Legal Enforcement Actions

Sec.

13.12 Formal complaints.

13.13 Consent orders.

13.15 Civil penalties: Federal Aviation Act of 1958.

13.16 Civil penalties: Hazardous Materials Transportation Act.

13.17 Seizure of aircraft.

13.19 Certificate action.

13.19a Final order of Hearing Officer in certificate of aircraft registration proceedings.

13.20 Orders of compliance, cease and desist orders, orders of denial and other orders.

13.21 Military personnel.

13.23 Criminal penalties.

13.25 Injunctions.

AUTHORITY: Secs. 302(f), 303(d), 313 (a) and (c), 1002 (a), (b) and (c), and 1004 through 1009, Federal Aviation Act of 1958 (49 U.S.C. 1342(f), 1344(d), 1354 (a) and (c), 1482 (a), (b), and (c), and 1484 through 1489); secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); secs. 27 and 30, Airport and Airway Development Act of 1970 (49 U.S.C. 1727 and 1730); sec. 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004); and secs. 1.47 (f) and (k), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47)).

5. By adding §§ 13.12 and 13.13 to read as follows:

§ 13.12 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to anything done or omitted to be done

by any person in contravention of any provision of any Act or of any regulation or order issued under it, as to matters within the jurisdiction of the Administrator. This section does not apply to complaints against the Administrator or employees of the FAA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action.

(2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC-27), 800 Independence Avenue, S.W., Washington, D.C. 20591;

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the Act or regulation or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) Complaints which do not meet the requirements of paragraph (b) of this section will be considered reports under § 13.1.

(d) Complaints which meet the requirements of paragraph (b) of this section will be docketed and a copy mailed to each person named in the complaint.

(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties shall be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in § 13.21.

(f) The person named in the complaint shall file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator shall determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator determines that a complaint does not state facts which warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal given in writing.

(i) If the Administrator determines that reasonable grounds exist, an in-

formal investigation may be initiated or an order of investigation may be issued in accordance with Subpart F of this part, or both. Each person named in the complaint shall be advised which official has been delegated the responsibility for conducting the investigation under § 13.3(b) or (c).

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official FAA records relating to the disposition of the complaint are maintained in current docket form in the Enforcement Docket, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under applicable law or regulations, and may obtain a photostatic or duplicate copy upon paying the cost of the copy.

§ 13.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order submitted to the official who issued the notice under this section must include—

- (1) A proposed order;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of the right to further procedural steps and of all rights to judicial review; and
- (4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order.

(c) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.19a. [Redesignated from § 13.67]

6. By redesignating § 13.67 as § 13.19a.

7. By revising § 13.20 to read as follows:

§ 13.20 Orders of compliance, cease and desist orders, orders of denial and other orders.

(a) This section applies to the issuance of orders of compliance, cease and desist orders, orders of denial and other orders as the Administrator

shall deem necessary to carry out the provisions of the Federal Aviation Act of 1958 and the Airport and Airway Development Act of 1970. This section does not apply to orders issued pursuant to sections 602 and 609 of the Federal Aviation Act of 1958.

(b) Unless the Administrator determines that an emergency exists and safety in air commerce requires the immediate issuance of an order under this section, the person subject to the order shall be provided with notice prior to issuance.

(c) Within 30 days after service of the notice, the person subject to the order may reply in writing or request a hearing in accordance with Subpart D of this part.

(d) If a reply is filed, as to any charges not dismissed or not subject to a consent order, the person subject to the order may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(e) Failure to request a hearing within the period provided in paragraphs (c) or (d) of this section—

(1) Constitutes a waiver of the right to appeal and the right to a hearing, and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice, or as modified as the official may determine necessary based on any written response, and to issue an appropriate order, without further notice or proceedings.

(f) If a hearing is requested in accordance with paragraphs (c) or (d) of this section, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, shall set forth findings and conclusions and the reasons therefor, and either—

- (1) Dismiss the notice; or
- (2) Issue an order.

(g) Any party to the hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(h) If a notice of appeal is not filed from the order issued by a Hearing Officer, such order is the final agency order.

(i) Any person filing an appeal authorized by paragraph (g) of this section shall file an appeal brief with the Administrator within 40 days after the date of issuance of the order, and serve a copy on the other party. A reply brief must be filed within 20 days after service of the appeal brief and a copy served on the appellant.

(j) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying or affirming

the order. The Administrator's order includes the reasons for his action.

(k) For good cause shown, requests for extensions of time to file any document under this section may be granted by—

(1) The official who issued the order, if the request is filed prior to the designation of a Hearing Officer; or

(2) The Hearing Officer, if the request is filed prior to the filing of a notice of appeal; or

(3) The Administrator, if the request is filed after the filing of a notice of appeal.

(l) Except in the case of an appeal from the decision of a Hearing Officer, the authority of the Administrator under this section is also exercised by the Chief Counsel, Deputy Chief Counsel, each Assistant Chief Counsel and each Regional Counsel.

(m) Filing and service of documents under this section shall be accomplished in accordance with § 13.43; and the periods of time specified in this section shall be computed in accordance with § 13.44.

§ 13.21 [Title Revised]

8. By revising the title of § 13.21 to read "Military personnel."

§ 13.31 [Amended]

9. By amending § 13.31 by inserting the section numbers "13.11(k), 13.11(l)," after the word "with" and before the section number "13.16(d)(3)," and by inserting the section numbers "13.20(c), 13.20(d)," after "13.19(c)(5)" and before "13.75(a)(2)."

§ 13.59 [Amended]

10. By amending § 13.59(b) to add the phrase "and orders of denial," after the word "defense" and before the word "the."

§ 13.75 [Amended]

11. By revising § 13.75 as follows:

(1) By deleting paragraphs (c), (d) and (e)

(2) By redesignating paragraph (f) as paragraph (c) and amending it to read as follows:

.....
(c) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) of this section—

(1) Constitutes a waiver of the right to a hearing and the right to an appeal, and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

12. By amending § 13.83(a) to read as follows:

§ 13.83 Appeal.

(a) Any party to the hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

13. By adding a new Subpart F to read as follows:

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

- Sec.
- 13.101 Applicability.
 - 13.103 Order of investigation.
 - 13.105 Notification.
 - 13.107 Designation of additional parties.
 - 13.109 Convening the investigation.
 - 13.111 Subpoenas.
 - 13.113 Noncompliance with the investigative process.
 - 13.115 Public proceedings.
 - 13.117 Conduct of investigative proceeding or deposition.
 - 13.119 Rights of persons against self-incrimination.
 - 13.121 Witness fees.
 - 13.123 Submission by party to the investigation.
 - 13.125 Depositions.
 - 13.127 Reports, decisions and orders.
 - 13.129 Post-investigation action.
 - 13.131 Other procedures.

AUTHORITY: (Secs. 302(f), 303(d), 313(a) and (c), 1002(a), (b) and (c), and 1004 through 1009, Federal Aviation Act of 1958 (49 U.S.C. 1342(f), 1344(d), 1354(a) and (c), 1482(a), (b), and (c), and 1484 through 1489); secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); secs. 27 and 30, Airport and Airway Development Act of 1970 (49 U.S.C. 1727 and 1730); sec. 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004); and secs. 1.47(f) and (k), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

§ 13.101 Applicability.

(a) This subpart applies to fact-finding investigations in which an order of investigation has been issued under § 13.3(c) or § 13.12(f).

(b) This subpart does not limit the authority of duly designated persons to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal investigation as provided for in sections 313 and 1004(a) of the Federal Aviation Act (49 U.S.C. 1354 and 1484(a)) and section 109(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(a)).

§ 13.103 Order of investigation.

The order of investigation—

(a) Defines the scope of the investigation by describing the information sought in terms of its subject matter

or its relevancy to specified FAA functions;

(b) Sets forth the form of the investigation which may be either by individual deposition or investigative proceeding or both; and

(c) Names the official who is authorized to conduct the investigation and serve as the Presiding Officer.

§ 13.105 Notification.

Any person under investigation and any person required to testify and produce documentary or physical evidence during the investigation will be advised of the purpose of the investigation, and of the place where the investigative proceeding or deposition will be convened. This may be accomplished by a notice of investigation or by a subpoena. A copy of the order of investigation may be sent to such persons, when appropriate.

§ 13.107 Designation of additional parties.

(a) The Presiding Officer may designate additional persons as parties to the investigation, if in the discretion of the Presiding Officer, it will aid in the conduct of the investigation.

(b) The Presiding Officer may designate any person as a party to the investigation if that person—

(1) Petitions the Presiding Officer to participate as a party; and

(2) Is so situated that the disposition of the investigation may as a practical matter impair the ability to protect that person's interest unless allowed to participate as a party, and

(3) Is not adequately represented by existing parties.

§ 13.109 Convening the investigation.

The investigation shall be conducted at such place or places designated by the Presiding Officer, and as convenient to the parties involved as expeditious and efficient handling of the investigation permits.

§ 13.111 Subpoenas.

(a) Upon motion of the Presiding Officer, or upon the request of a party to the investigation, the Presiding Officer may issue a subpoena directing any person to appear at a designated time and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

(b) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the time when service is made.

(c) Subpoenas shall extend in jurisdiction throughout the United States or any territory or possession thereof.

§ 13.113 Noncompliance with the investigative process.

If any person fails to comply with the provisions of this subpart or with any subpoena or order issued by the Presiding Officer or the designee of the Presiding Officer, judicial enforcement may be initiated against that person under applicable statutes.

§ 13.115 Public proceedings.

All investigative proceedings and depositions shall be public unless the Presiding Officer determines that the public interest requires otherwise.

§ 13.117 Conduct of investigative proceeding or deposition.

(a) The Presiding Officer or the designee of the Presiding Officer may question witnesses.

(b) Any witness may be accompanied by counsel. Except as provided in paragraph (c) of this section, a witness may not participate in any other part of the investigation.

(c) Any party may—

(1) Be accompanied by counsel; and

(2) Question witnesses, provided the questions are relevant and material to the matters under investigation and would not unduly impede the progress of the investigation; and

(3) Make objections on the record and argue the basis for such objections.

(d) Copies of all notices or written communications sent to a party or witness shall upon request be sent to that person's attorney of record.

§ 13.119 Rights of persons against self-incrimination.

(a) Whenever a person refuses, on the basis of a privilege against self-incrimination, to testify or provide other information during the course of any investigation conducted under this subpart, the Presiding Officer may, with the approval of the Attorney General of the United States, issue an order requiring the person to give testimony or provide other information. However, no testimony or other information so compelled (or any information directly or indirectly derived from such testimony or other information) may be used against the person in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Presiding Officer may issue an order under this section if—

(1) The testimony or other information from the witness may be necessary to the public interest; and

(2) The witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination.

(c) Immunity provided by this section will not become effective until the

person has refused to testify or provide other information on the basis of a privilege against self-incrimination, and an order under this section has been issued. An order, however, may be issued prospectively to become effective in the event of a claim of the privilege.

§ 13.121 Witness fees.

All witnesses appearing shall be compensated at the same rate as a witness appearing before a United States District Court.

§ 13.123 Submission by party to the investigation.

(a) During an investigation conducted under this subpart, a party may submit to the Presiding Officer—

(1) A list of witnesses to be called, specifying the subject matter of the expected testimony of each witness, and

(2) A list of exhibits to be considered for inclusion in the record.

(b) If the Presiding Officer determines that the testimony of certain witnesses or the receipt of certain exhibits in accordance with paragraph (a) of this section will be relevant, competent and material to the investigation, the Presiding Officer may subpoena the witnesses or use the exhibits during the investigation.

§ 13.125 Depositions.

Depositions for investigative purposes may be taken at the discretion of the Presiding Officer with reasonable notice to the party under investigation. Such depositions shall be taken before the Presiding Officer or other person authorized to administer oaths and designated by the Presiding Officer. The testimony shall be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible shall then be subscribed by the deponent. Any person may be compelled to appear and testify and to produce physical and documentary evidence in the same manner as in an investigative proceeding.

§ 13.127 Reports, decisions and orders.

The Presiding Officer shall issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions shall be prepared by the official who issued the order of investigation in every case which results in no action, or no action as to a particular party to the investigation. All such reports shall be furnished to the parties to the investigation and filed in the public docket. Insertion of the report in the Public Docket shall constitute "entering of record" and publi-

cation as prescribed by section 313(b) of the Federal Aviation Act.

§ 13.129 Post-investigation action.

A decision on whether to initiate subsequent action shall be made on the basis of the record developed during the formal investigation and any other information in the possession of the Administrator.

§ 13.131 Other procedures.

Any question concerning the scope or conduct of a formal investigation not covered in this subpart may be ruled on by the Presiding Officer on motion of the Presiding Officer, or on the motion of a party or a person testifying or producing evidence.

(Secs. 302(f), 303(d), 313(a) and (c), 1002(a), (b) and (c), and 1004 through 1009, Federal Aviation Act of 1958 (49 U.S.C. 1342(f), 1344(d), 1354(a) and (c), 1482(a), (b), and (c) and 1484 through 1489); secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); secs. 27 and 30, Airport and Airway Development Act of 1970 (49 U.S.C. 1727 and 1730); sec. 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004); and secs. 1.47(f) and (k), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47)).

Issued in Washington, D.C., on March 9, 1979.

CLARK H. ONSTAD,
Chief Counsel.

[FR Doc. 79-8244 Filed 3-16-79; 12:00 pm]

[4910-13-M]

[14 CFR Parts 25 and 37]

[Docket No. 18887; Notice No. 79-7]

AIRCRAFT TIRES

Proposed Revision of Technical Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to revise the Technical Standard Order for Aircraft Tires (TSO-C62b) and a related transport category airplane type certification requirement. As revised, the standards would incorporate updated and improved minimum performance standards applicable to landing gear and nose wheel aircraft tires, and more comprehensive transport category airplane type design standards covering tire loads and speed ratings. The proposed changes are necessary in the interest of safety to meet increasingly severe tire operating conditions. The proposed amendment for

tire standards would also specify a cutoff date after which tire manufacturers could no longer identify their tires as approved under earlier standards.

DATES: Comments must be received on or before April 18, 1979.

ADDRESSES: Send all comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24) Docket No. 18887, 800 Independence Ave., S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond E. Ramakis, Regulatory Projects Branch, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to any significant environmental or economic impact that might result because of the adoption of these proposals may also be submitted. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

AVAILABILITY OF NPRM'S

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Ave., S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

BACKGROUND

In 1964 the transport category airplane type certification requirements related to tires as set forth in the Civil Air Regulations were recodified into the Federal Aviation Regulations (§ 25.733). The rule has been subsequently amended only to require tire speed and load ratings approved by the Administrator (1970), and to impose a dimensional limitation for tires installed on retractable landing gear (1976). The related minimum performance standards for tires are set forth in the technical standard order (§ 37.167 Aircraft Tires, TSO-C62b) which is unchanged since it became effective in 1962. A series of accidents and incidents involving large commercial jet airplanes, particularly wide-body types, that began in the mid-1970's has involved failures of tires, wheels, brakes, and anti-skid devices. Some of these events resulted in injuries to occupants and, in three cases, complete destruction of the aircraft.

Beginning in 1975, the FAA placed strong emphasis on intensifying its ongoing safety surveillance efforts with respect to aircraft tires and began an analysis of tire failures and potential corrective actions. It was determined that the advent of large wide-body type aircraft designed with complex landing gear systems, their unprecedented high operating gross weights, and the operation of all aircraft at higher taxi speeds over long taxi distance were among the significant factors in the tire failures. Though not a part of this rulemaking action, other important factors include maintenance practices, taxiway and runway cleanliness, and the lack of in-cockpit indicators of tire failure.

As a result of its evaluation, the FAA developed tentative changes to the standards for both tires and wheel-brake assemblies. These efforts led to joint FAA-industry meetings in 1976 and 1977 during which the proposed standards were further revised and updated to reflect the latest technology and to meet operating conditions. In one area this has already resulted in the issuance of a notice of proposed rule making to upgrade standards for aircraft wheels and wheel-brake assemblies (Notice 78-16, 43 F.R. 57261, December 7, 1978). With respect to tires, the FAA-industry discussions have led to the formulation of the revised standards being proposed in this notice.

Concurrent with the FAA's development of upgrade standards for tires, the National Transportation Safety Board (NTSB) expressed its concern about multiple tire failures on wide-body jet transport airplanes. On September 6, 1978, the NTSB issued a series of safety recommendations for regulatory and advisory actions affect-

ing tires which the Board considered necessary in the areas of design standards, qualification testing, quality control during manufacture, and operational limits. The proposals contained in this rulemaking action are responsive to the NTSB recommendations for tires insofar as airplane certification standards and tire minimum performance standards are concerned.

It is the FAA's intent that all tires approved under TSO procedures and manufactured after a specified future date meet the proposed new TSO standards. Considerations relevant to determining such a date are discussed below.

This rulemaking action is one of a number of related steps in a program to resolve the tire problem. The FAA has taken or has under consideration other actions intended to improve tire maintenance practices and to update requirements for tires installed on airplanes currently in service. Advisory Circular No. 20-97 dated January 28, 1977 and Maintenance Bulletin 32-3, dated January 28, 1977, provide guidance material to assist the operating personnel concerned with tire maintenance. In the regulatory area, the FAA in the near future will propose an operating rule requiring that certain airplanes be equipped with tires meeting the proposed new TSO standards.

DISCUSSION OF THE PROPOSED RULE

General. The primary objective of the changes proposed herein is to update the minimum performance standards for all new aircraft main landing gear and nose wheel tires with particular emphasis on those used on modern transport aircraft, in order that tire reliability will be enhanced and the incidence of tire failures decreased. In proposing these changes it is also an objective to ensure that the regulations be limited, insofar as possible, to matters of performance, rather than design, so that development of improved aircraft tires will not be inadvertently constrained. In reaching these objectives, the proposed changes fall into three broad categories: (1) Those that add substantively new or significantly stricter requirements; (2) those that revise or delete existing technical requirements in keeping with the latest state-of-the-art; and (3) editorial changes that are essentially clarifying in nature or needed for overall document consistency. For convenience of the reader, the more important of the proposed changes are discussed under these three categories. The categories are intended to reflect more the degree of change than the subject of change and there may be some overlap.

SUBSTANTIVELY NEW OR SIGNIFICANTLY STRICTER PROVISIONS FOR § 25.733

Present § 25.733(a)(1) would be revised to require that ground loads which tires must support be based on maximum ramp weight rather than the currently specified maximum take-off weight. The maximum ramp weight of the airplane may be significantly greater than the maximum takeoff weight and should be considered in relation to the tires. To account for airplane dynamic loading conditions and to be consistent with tire TSO standards, § 25.733(b)(2) and (3) would be revised to specify limiting ground reaction loads for nose wheel tires in terms of the tire load rating.

The present § 25.733 does not account for disproportionate loads on individual tires that may occur when more than one wheel and tire are mounted on a single landing gear axle. Such unequal tire loading between adjacent tires may cause temporary overloading of individual tires and subsequent tire failure. Factors contributing to this potential for unequal tire loading include operation on crowned runway/taxiway surfaces, pairing new tires with worn tires or pairing tires from different manufacturers, and unequal tire pressures. While some of these factors may be minimized by improved maintenance practices, unequal tire loading will continue to occur with multiple-mounted tires.

Ideally, from a load standpoint, either of the tires mounted on an axle which contains two wheels should be capable of supporting the entire induced load under all operating conditions if the other tire mounted on that axle fails. However, high-speed high-pressure tires which have a design margin factor of two are not presently available. Even if they were available, such tires under present designs would be subject to possible adverse safety effects from increased tire stiffness and a higher ramp loading from the markedly reduced tire footprint, as well as substantially increased tire size and weight. However, it is possible to determine a derating factor for airplane tire overloads which increases safety protection with a minimum of adverse effects. After a series of detailed discussions on this issue with knowledgeable tire and airframe manufacturers and airplane operators, the FAA has concluded that derating the main wheel tire rated load by 7 percent (i.e., a load factor of 1.07) in combination with the other changes proposed herein is an appropriate course of action. It is proposed to amend § 25.733 to require such a change for all new transport category airplane designs. The factor 1.07 is consistent with Aerospace Industries Association of America findings as presented to the FAA on October 4, 1977. When

considered in conjunction with the new overload takeoff test proposed in the TSO for tires as discussed below, this change will effectively require high-speed aircraft tires to withstand an overload of 1.61 times the present load rating, a substantial upgrading of previous requirements. Comments are specifically invited on the selection of 1.07 as the derating factor for multi-mounted tires, and the FAA will consider adopting a more stringent factor if it is shown that such other value can be practically achieved.

**SUBSTANTIVELY NEW OR SIGNIFICANTLY
STRICTER PROVISIONS PROPOSED FOR
§ 37.167**

The present § 37.167 contains no provision for terminating approvals for tires manufactured under the current or previous TSO standards. Thus, under current rules, it is possible that tires manufactured and approved under three TSO's, i.e., TSO C-62, C-62a, and C-62b, may be on the market. It is the FAA's intent that the manufacture and marking of new aircraft tires under these older standards be discontinued by some reasonable future date following effectivity of the new TSO. The safety benefits to be gained by terminating production under older standards will exceed the burden placed on tire manufacturers, operators, and the travelling public in shifting to tires meeting new standards. This proposed action is of primary interest to tire manufacturers and will parallel operating rules now being developed to require that certain aircraft be equipped with tires meeting the new standards by certain dates.

The FAA has carefully considered the many factors that must be considered in determining a cutoff date for production under older standards. These include such variables as the estimated times that would be necessary for redesign, testing, obtaining approvals, changes to manufacturing and marking procedures, and production, as well as the effect of costs in transitioning to new standards. Based on available information, the FAA considers that either 12 months, 18 months, 24 months, or 30 months after the effective date of the new standard could be a reasonable cutoff date. FAA herein proposes 2 years. However, since detailed information on the various factors is best known to manufacturers and operators, the FAA specifically solicits comments on each of the cited alternative specific cutoff dates and justification for any recommendations made.

**SUBSTANTIVELY NEW OR SIGNIFICANTLY
STRICTER PROVISIONS PROPOSED FOR TSO
C62b**

The term "airworthiness" would be deleted from present paragraph 4.4 *Temperature* inasmuch as a tire may be airworthy for use on one aircraft but not on another because of differences in load and speed requirements. However, a tire's performance capabilities can be evaluated independently of the aircraft on which it may be installed. Under this proposal, paragraph 4.4.1 *Ambient* would require substantiation by test or analysis that the tire is able to maintain its minimum performance following exposure to specified temperature extremes of -40°F to +160°F. Proposed paragraph 4.4.2 *Wheel rim heat* would also require establishment, by test or analysis, of the tire's ability to withstand temperatures up to 300°F due to heat generated in the wheel and brake system.

In order to improve the capability of tires to withstand present operating loads, especially in large transport aircraft, a substantially revised series of dynamometer tests is proposed under new section 6.3. These tests include a combination of high speed takeoff cycles, taxi cycles, and overload cycle, and overload taxi cycles, which are expected to result in major improvements in tire design with a significant increase in the safety level of high speed tires produced under the TSO. For tires rated at speeds greater than 160 mph, the high speed dynamometer test cycles simulating high energy takeoff or landing conditions would continue to be required, but the low speed landing test cycles would be deleted for a more realistic simulation of the critical high speed phase of operation. One high speed overload (150 percent of rated load) cycle would also be required to demonstrate the tire's ability to withstand a condition involving two tires on one axle where one may be overloaded due to the underinflation of its paired mate. It is also proposed to amend the current taxi test requirements by increasing the taxi speed (to 40 mph), load (to ramp weight), and number of required taxi cycles (to 8). Two overload (120 percent of rated load) taxi cycles are also proposed. The proposed standards account for increased demands placed on tires due to longer taxiways, higher speeds and unequal loading of tires paired on a single axle, and more realistically simulate actual use under adverse, but not uncommon, conditions.

Simulated low energy landing tests may be used instead of high energy takeoff or landing cycles for tires in the speed rating range of 120-160 mph. Except for requiring test at 160 mph instead of 120 mph, this alternative, as proposed under section 6.3, is

substantially identical to earlier requirements placed on these tires.

**REVISION OF EXISTING REQUIREMENTS—
§ 37.167**

Present § 37.167(b) *Marking* requires, among other things, that the "qualification test speed" be legibly and permanently marked when the test speed is greater than 160 mph. The need for marking the speed rating applies equally to lower speed tires. Accordingly, the words "qualification test speed" and the given speed value would be replaced by "speed rating" to be consistent with the terminology used in the airworthiness standards for aircraft. Since the airworthiness standards require that the load rating of a tire not be exceeded when the tire is installed on an aircraft, it is proposed to include "load rating" as a required marking on the tire. When investigating the causes of operational tire failures, identification of some tires cannot be made without knowledge of the the part number since more than one part number may exist for the same size and ply rated tire. Therefore, it is proposed to include "manufacturer's part number" as a required marking on the tire. Also, ply rating would be deleted as a required marking since the airworthiness standards for aircraft do not utilize such a rating. The tire manufacturer is free to mark the ply rating on the tire but he should not be required to do so.

Section 37.167(c) would be amended, for reasons similar to those given for § 37.167(b), to require submission of technical data on only the most meaningful tire characteristics. To provide for the continued airworthiness of a tire in service, § 37.167(c) would also be amended to require the manufacturer to furnish applicable maintenance and repair instructions. However, the proposal would lessen the paperwork burden on TSO applicants by reducing the number of copies of the various technical data required to be submitted.

**REVISION OF EXISTING REQUIREMENTS—
TSO C62b.**

Present paragraph 4.1 *Unbalance* would be amended by substituting the equation, $M = 0.025D^2$, in lieu of the four existing equations used in determining the maximum allowable static unbalance of the tire. The new equation yields values close to those from the four existing equations and provides more rigid balance requirements needed for smaller diameter tires.

Paragraph 4.2 *Balance Marker* presently requires that a balance marker, consisting of a red dot, be permanently branded into the sidewall of the tire immediately above the bead to indicate the lightweight point of the tire.

However, the original sidewall markings may be obliterated and the lightweight point on the tire may change if the tire is retreaded. Therefore, to carry out the intent, paragraph 4.2 would be amended to substitute for the requirement that the red dot be permanent, a new requirement that the dot must remain for any period of storage plus the original tread life of the tire.

Present paragraph 4.5 *Tread Design* would be amended to require requalification testing of the tire for changes in material compounds. Such changes are not covered in the present TSO and are considered major changes because they may have a significant effect on tire performance.

The present paragraph 4.5.1 *Underskid Thickness* requires that aircraft tires and casings with ribbed or non-skid tread patterns have a specific minimum underskid thickness. This requirement imposes a restriction in the design that has no bearing on tire performance. Since a specific minimum design requirement could inhibit the development of an improved tire design, it is proposed to delete current paragraph 4.5.1.

Adherence to a specified deflection severely limits the scope of tire designs since tire performance is not dependent on deflection but rather on more significant design parameters such as load, speed, and inflation pressure. Accordingly, paragraph 5.1 *Load Ratings* would require that load ratings be determined under the provisions of the airworthiness standards rather than on the basis of a prescribed tire deflection although the applicant would be required to identify the actual percent deflection of the tire at rated load and rated inflation pressure. Therefore, the appropriate paragraphs of the airworthiness standards have been referenced in paragraph 5.1.

Under the proposed section 6.2 *Low Speed Tires*, the formula for calculating the kinetic energy of the dynamometer flywheel would be corrected to provide a more accurate determination. The amended formula is consistent with that used by the Department of Defense in its tire specification MIL-T-5041G. In addition, the low speed dynamometer test procedures would be clarified with respect to the type of dynamometer used to assure that the kinetic energy and inertia loads absorbed by the tire during the simulated landings will match the intended aircraft performance conditions. Other changes concern an improved method for monitoring tire air or carcass temperature which is procedurally more safe to carry out but does not change the resultant test temperatures.

In the proposed section 6.3 *High Speed Tires*, such tires would be redefined as having speed ratings greater than 120 mph instead of the present 160 mph. This change would eliminate the problem resulting from past equipment limitations where low speed tires, operating between 120-160 mph, were tested at the lesser speed of 120 mph. In addition, the dynamometer test speeds for high speed tires would also be revised by removing the existing 225 mph test speed limit since airplanes with tires having speed ratings greater than this limit are in operation with expectations for others within the near future.

EDITORIAL CHANGES PROPOSED TO EXISTING TSO C62b

The Roman numeral type designations III, VII, and VIII used in the identification of tires would be deleted from paragraph 2.0 *Scope* since there are many newly designed tires currently produced that do not fit the old Roman numeral type designations. Further, it is not necessary that the FAA regional offices be aware of these tire types when approving tires provided the essential design parameters, such as size, load, and speed ratings, are known.

The title of paragraph 4.3 *Burst Pressure* would be changed to the more appropriate title—"Overpressure." The present title implies that the tire must be tested to the point that it bursts. This implication is incorrect since the objective of the test is to ensure that a new tire will withstand a pressure to 4.0 times greater than its rated inflation pressure. A proposed test period of 3 seconds is also added for specificity.

Paragraph 4.6 *Slippage* currently specifies that mounted tires show no evidence of slippage on the wheel rim during the first five dynamometer test landings. Under this proposal, a positive requirement would be substituted to make clear that slippage is not permitted in the first five test cycles, while retaining the requirement that subsequent slippage, if it occurs, may not adversely affect tire performance.

Present paragraph 4.7 *Tire Airworthiness* requires that the tire withstand the dynamometer landings specified in the standard without failure or visible signs of deterioration other than normal expected tread wear. Under this proposal, the paragraph would be amended to clarify that the term "dynamometer landings" means dynamometer tests and placed in the section dealing with dynamometer test requirements.

Since the applicant will have the responsibility to select the design percent deflection of the tire under this proposal and would also establish the allowable deflection tolerances, para-

graph 5.1.3 *Deflection Tolerances* would no longer be required and would be deleted.

Under this proposal, present paragraph 5.2 *Dynamic Load Rating, Nose Wheel Tires* would be deleted as unnecessary. The load ratings of nose wheel tires would be based on the applicable FAR sections listed in proposed paragraph 5.1.

Present paragraph 5.3 *Inflation Pressure* would be revised to require that the rated inflation pressure be established on the basis of the static load requirement rather than tire deflections since a specific tire deflection would no longer be a requirement. As revised, the paragraph would be redesignated as 5.2 *Rated inflation pressure*.

Consistent with the proposed change made to § 37.167(c) *Data requirements*, present paragraph 5.4 *Ply Rating* would be deleted. Ply rating is only an index of strength of a tire and is not needed by the FAA when reviewing the applicant's test data for tire approval purposes.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend Parts 25 and 37 of the Federal Aviation Regulations (14 CFR Parts 25 and 37) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By amending § 25.733 to read as follows:

§ 25.733 Tires.

(a) When a landing gear axle is fitted with a single wheel and tire assembly, the wheel must be fitted with a suitable tire of proper fit with a speed rating approved by the Administrator that is not exceeded under critical conditions, and having a load rating approved by the Administrator that is not exceeded under—

(1) Equal loads, corresponding to the most critical combination of maximum ramp weight, center of gravity position, thrust, and inertial effects (excluding momentary loads) on each main wheel tire; and

(2) Equal loads corresponding to the ground reactions in paragraph (b) of this section, on each nose wheel tire.

(b) The applicable ground reactions for nose wheel tires are as follows:

(1) The ground reaction for the tire with the most critical combination of ramp weight and center of gravity position. This load may not exceed the load rating of the tire.

(2) The ground reaction for the tire at maximum landing weight, assuming that the mass of the airplane is concentrated at the most critical location of the center of gravity for this weight and is exerting a force of 1.0 g down-

ward and 0.31 g forward with the reactions being distributed to the nose and main wheels by the principles of statics and with 0.31 g drag reaction at the ground applied at each wheel with brakes. This load may not exceed 1.5 times the load rating of the tire.

(3) The ground reaction for the tire at design ramp weight, assuming that the mass of the airplane is concentrated at the most critical location of the center of gravity for this weight and is exerting a force of 1.0 g downward and 0.20 g forward. The reactions in this case must be distributed to the nose and main wheels by the principles of statics and a 0.20 g drag reaction at the ground is applied at each wheel with brakes. This load may not exceed 1.5 times the load rating of the tire.

(c) When a landing gear axle is fitted with more than one wheel and tire assembly, such as dual or dual-tandem, each wheel must be fitted with a suitable tire of proper fit with a speed rating approved by the Administrator that is not exceeded under critical conditions, and having a load rating approved by the Administrator that is not exceeded by—

(1) 1.07 times the loads specified in paragraph (a)(1) of this section, on each main wheel tire; and

(2) Loads specified in paragraphs (a)(2), (b)(1), and (b)(2) of this section on each nose wheel.

(d) Each tire installed on a retractable landing gear system must, at the maximum size of the tire type expected in service, have a clearance to surrounding structure and systems that is adequate to prevent contact between the tire and any part of the structure or systems.

PART 37—TECHNICAL STANDARD ORDER AUTHORIZATIONS

2. By revising § 37.167 to read as follows:

§ 37.167 Aircraft Tires—TSO-C62c.

(a) *Applicability.* This technical standard order (TSO) prescribes the minimum performance standards that tires, excluding tailwheel tires, must meet in order to be identified with the applicable TSO marking. Tires which are to be so identified and which are manufactured on or after (the effective date of this amendment) must meet the requirements of the "Federal Aviation Administration Standard for Aircraft Tires," dated (the effective date of this amendment), set forth at the end of this section.

(b) *Marking.* In lieu of the marking requirements of § 37.7(d), aircraft tires must be legibly and permanently marked at least with the following:

(1) Brand name and the name or registered trademark of the manufacturer responsible for compliance.

(2) Speed rating, load rating, size, skid depth, serial number, and the manufacturer's part number and plant code.

(3) Applicable technical standard order (TSO) number.

(c) *Data requirements.* (1) In addition to the data specified in § 37.5, the manufacturer must also furnish to the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration (or, in the case of the Western Region, the Chief, Aircraft Engineering Division), in the region in which the manufacturer is located, one copy, or copies as otherwise requested by the regional office, of the following technical data: Speed rating, load rating, rated inflation pressure, tire size, width, outside diameter, weight, skid depth, static unbalance of the test tire, wheel rim designation, manufacturer's part number, and, for high-speed tires, a summary of the load-speed-time parameters used in the dynamometer tests. As used in this section, the term "high-speed tire" means a tire tested at a speed greater than 120 mph.

(2) The manufacturer must also furnish the applicable maintenance and repair instructions to the regional office identified in paragraph (c)(1) of this section. The maintenance data provided by the manufacturer must include inspection criteria for tires to determine eligibility for used tires to be continued in service. Recapping procedures must be included in the maintenance information along with any special repair methods applicable to the tire and special nondestructive inspection techniques.

(d) *Previously approved equipment.* Notwithstanding § 37.3(a) and (b) of this part and the provisions of any specific previous TSO approval, after (the date 2 years after the effective date of this amendment) no person may identify or mark a tire with TSO numbers TSO-C62, TSO-C62a, or TSO-C62b.

FEDERAL AVIATION ADMINISTRATION STANDARDS FOR AIRCRAFT TIRES

1.0 *Purpose.* This document contains minimum performance standards for new aircraft tires, excluding tailwheel tires, that are to be identified as meeting the standards of TSO-C62c.

2.0 *Scope.* These minimum performance standards apply to aircraft tires having speed and load ratings that are established on the basis of the speed and loads to which the tires have been tested.

3.0 *Material requirement.* Materials must be suitable for the purpose intended. The suitability of the materials must be determined on the basis of satisfactory service experience or substantiating dynamometer tests.

4.0 *Design and construction.*

4.1 *Unbalance.* The moment (M) of static unbalance in inch ounces may not be greater than the value determined using the formula, moment (M) = 0.025 D² rounded off to the next lower whole number. D = maximum outside diameter of the tire in inches.

4.2 *Balance marker.* A balance marker, consisting of a red dot, must be affixed on the sidewall of the tire immediately above the bead to indicate the lightweight point of the tire. The dot must remain for any period of storage plus the original tread life of the tire.

4.3 *Overpressure.* The tire must withstand for at least three seconds a pressure of at least 4.0 times the rated inflation pressure (as specified in paragraph 5.2) at ambient temperature.

4.4 *Temperature.*

4.4.1 *Ambient.* It must be substantiated by applicable tests or shown by analysis that at least the minimum performance required of the tire by this standard is maintained following exposure of the tire to the temperature extremes of not higher than -40° F and not lower than +160° F for a period of not less than 24 hours at each extreme.

4.4.2 *Wheel rim heat.* It must be substantiated by the applicable dynamometer tests as provided under paragraph 6.0 or shown by analysis that at least the minimum performance required of the tire by this standard is maintained following exposure of the tire to a wheel bead seat temperature of not lower than 300° F for at least one hour.

4.5 *Tread design.* Changes in materials that affect performance or changes in number or location of tread ribs and grooves or skid depth increases, made subsequent to the tire qualification, are major changes and must be substantiated by dynamometer tests provided by paragraph 6.0.

4.6 *Slippage.* Tires tested in accordance with the dynamometer tests provided by paragraph 6.0, may not slip on the wheel rim during the first five dynamometer cycles. Slippage that subsequently occurs may not damage the tube, valve, or the air seal of the tire bead of tubeless tires.

5.0 *Ratings.*

5.1 *Load ratings.* The load ratings of aircraft tires must be established in accordance with the provisions under §§ 23.733, 25.733, 27.733 and 29.733 of this chapter, as appropriate. The percent deflection, including allowable tolerances at rated load and rated inflation pressure, must be identified. The radial distance from the outermost surface of the wheel rim flange to the outermost surface of the tire at no load is defined as the distance equivalent to 100 percent deflection.

5.2 *Rated inflation pressure.* The rated inflation pressure must be estab-

lished at ambient temperature on the basis of the rated load as established under paragraph 5.1.

6.0 Dynamometer test requirements. The tire may not fail the applicable dynamometer tests specified herein or have visible signs of deterioration other than normal expected tread wear.

6.1 General. The following conditions apply to both low-speed and high-speed tires when these tires are subjected to the applicable dynamometer tests.

6.1.1 Tire test load. Unless otherwise specified herein for a particular test, the tire must be forced against the dynamometer flywheel at not less than the rated load of the tire during the entire roll distance of the test.

6.1.2 Test inflation pressure. The test inflation pressure must be that which is necessary at ambient temperature to obtain the same loaded radius of the tire against the flywheel under the rated load as the loaded radius of the tire against a flat plate under the rated load and at rated inflation pressure. Adjustments to the test inflation pressure may not be made to compensate for increases due to temperature rise occurring during the tests.

6.1.3 Test specimen. A single tire specimen must be used in the applicable dynamometer tests specified herein except as noted in paragraph 6.3.3.3.

6.2 Low speed tires. Tires operating at ground speeds of 120 mph or less must withstand 200 landing cycles on a dynamometer at the following test temperature and kinetic energy and using either test method A or test method B.

6.2.1 Test temperature. The temperature of the air contained in the tire or of the carcass at any point on the tire must be not lower than 105° F at the start of at least 90 percent of the test cycles. For the remaining 10 percent of the test cycles, the contained air or carcass temperature must be not lower than 80° F at the start of each cycle. Rolling the tire on the flywheel is acceptable for obtaining the minimum starting temperature.

6.2.2 Kinetic energy. The kinetic energy of the flywheel to be absorbed by the tire must be calculated as follows:

$K.E. = CWV^2 = 162.7W = \text{Kinetic energy in foot pounds}$

where

$C = 0.0113$

$W = \text{Load rating of the tire in pounds}$

$V = 120 \text{ mph}$

6.2.3 Test method A—variable mass flywheel. The total number of dynamometer landings must be divided into two equal parts having speed ranges shown below. If the exact number of

flywheel plates cannot be used to obtain the calculated kinetic energy value or proper flywheel width, a greater number of plates must be selected and the dynamometer speed adjusted to obtain the required kinetic energy.

6.2.3.1 90 mph—0 mph. In the first series of 100 landings, the maximum landing speed is 90 mph and the minimum unlanding speed is 0 mph. The landing speed must be adjusted so that 56 percent of the kinetic energy calculated under paragraph 6.2.2 will be absorbed by the tire. If the adjusted landing speed is calculated to be less than 80 mph, the following must be done: The landing speed must be determined by adding 28 percent of the kinetic energy calculated under paragraph 6.2.2 to the flywheel kinetic energy at 64 mph, and the unlanding

speed determined by subtracting 28 percent of the kinetic energy calculated under paragraph 6.2.2 from the flywheel kinetic energy at 64 mph.

6.2.3.2 120 mph—90 mph. In the second series of 100 landings, the minimum landing speed is 120 mph and the nominal unlanding speed is 90 mph. The unlanding speed must be adjusted as necessary so that 44 percent of the kinetic energy calculated under paragraph 6.2.2 will be absorbed by the tire.

6.2.4 Test method B—fixed mass flywheel. The total number of dynamometer landings must be divided into two equal parts having speed ranges indicated below. Each landing must be made in a time period, T , calculated so that the tire will absorb the kinetic energy determined under paragraph 6.2.2. The time period must be calculated using the equation:

$$T_C = \frac{KE_C}{\frac{KE_{W(UL)}}{T_{L(UL)}} - \frac{KE_{W(LL)}}{T_{L(LL)}} - \frac{KE_{W(LL)}}{T_{W(UL)}} - \frac{KE_{W(LL)}}{T_{W(LL)}}}$$

For the 90 mph to 0 mph test, the equation reduces to:

$$T_C = \frac{KE_C}{\frac{KE_{W(UL)}}{T_{L(UL)}} - \frac{KE_{W(UL)}}{T_{W(UL)}}}$$

where

T_C = Calculated time, in seconds, for the tire to absorb the required kinetic energy.

KE_C = Kinetic energy, in foot pounds, the tire is required to absorb during each landing cycle.

KE_W = Kinetic energy, in foot pounds, of the flywheel at given speed.

T_L = Coast down time, in seconds, with rated tire load on flywheel.

T_W = Coast down time, in seconds, with no tire load on flywheel.

(UL) = Subscript for upper speed limit.

(LL) = Subscript for lower speed limit.

6.2.4.1 90 mph—0 mph test. In the first series of 100 landings, the tire must be landed against the flywheel with the flywheel having a peripheral speed of not less than 90 mph. The flywheel deceleration must be constant from 90 mph to 0 mph in the time T_C .

6.2.4.2 120 mph—90 mph test. In the second series of 100 landings, the tire

must be landed against the flywheel with the flywheel having a peripheral speed of not less than 120 mph. The flywheel deceleration must be constant from 120 mph to 90 mph in the time T_C .

6.3 High speed tires. Tires operating at ground speeds greater than 120 mph must be tested on a dynamometer under conditions which simulate runway operation and tire performance for the most critical combination of ramp weight, ground speed, and airplane center of gravity position, in accordance with the following. Alternate tests involving a landing sequence for high-speed tires in the 120 to 160 mph range are set forth in paragraphs 6.3.3.5.1 and 6.3.3.5.2.

6.3.1 Test temperature. The temperature of the air contained in the tire or of the carcass at any point on the tire must be not lower than 120° F at the start of each test cycle. Rolling the tire on the dynamometer is acceptable

for obtaining the minimum starting temperature.

6.3.2 Dynamometer test speeds. Ap-

plicable dynamometer test speeds for corresponding maximum ground speeds are as follows:

Maximum ground speed of aircraft, mph		Speed rating of tire, mph		Minimum dynamometer speed at S, mph	
Over—	Not over—				
120	160	160		160	
160	190	190		190	
190	210	210		210	
210	225	225		225	
225	235	235		235	
235	245	245		245	

For ground speeds over 245 mph, the tire must be tested to the maximum applicable load-speed-time requirements and appropriately identified with the proper speed rating.

6.3.3 Dynamometer cycles. The tire must withstand 50 takeoff cycles, 1 overload takeoff cycle, and 10 taxi cycles described below. The sequence of the cycles is optional.

6.3.3.1 Symbol definitions. The numerical values which are used for the following symbols must be determined from the applicable airplane load-speed-time data:

- L_0 = Zero tire load (liftoff).
- L_r = Tire load at rotation, pounds.
- L_s = Tire load at start of takeoff, pounds.
- RD = Roll distance, feet.
- S_0 = Zero tire speed.
- S_r = Tire speed at rotation, mph.

S_r = Tire speed at liftoff, mph (not less than speed rating).

T_0 = Start of takeoff.

T_1 = Time to rotation, seconds.

T_2 = Time to liftoff, seconds.

6.3.3.2 Takeoff cycles. For these cycles, use Figure 1 or Figure 2. The load-speed-time data must be used as the basis for the curves in these tests.

6.3.3.3 Overload takeoff cycle. A new tire may be used for this cycle. The cycle must duplicate the takeoff cycles specified under paragraph 6.3.3.2 except that the tire load, L_s , must be increased by a factor of at least 1.5. Upon completion of the overload takeoff cycle, the tire must maintain rated inflation pressure.

6.3.3.4 Taxi cycles. The tire must withstand at least 10 taxi cycles on a dynamometer under the following test conditions:

Number of test cycles	Minimum tire load, lbs.	Minimum speed mph	Minimum roll distance, ft.
8.....	rated load.....	40	35,000
2.....	1.2 times rated load.....	40	35,000

6.3.3.5 Alternate dynamometer tests.

6.3.3.5.1 Landing cycle tests. Test cycles which simulate landings may be used in lieu of the takeoff cycles speci-

fied in paragraph 6.3.3. For the landing cycles, a deceleration load-speed-time schedule wherein the dynamometer flywheel is decelerated to the

applicable conditions must be followed. The minimum dynamometer speed at landing must be the rated speed of the tire.

6.3.3.5.2 120 mph to 160 mph tires. For tires with speed ratings greater than 120 mph but not greater than 160 mph, the following tests may be used. The tire must withstand 200 dynamometer landing cycles divided into two equal parts. For these cycles, the kinetic energy of the flywheel to be absorbed by the tire must be calculated as follows:

$$K.E. = 289.3W$$

where W = load rating of the tire in pounds.

6.3.3.5.2.1 120 mph-0 mph. In the first series of 100 landings, the maximum landing speed is 120 mph and the unlanding speed is 0 mph. The landing speed must be adjusted so that 56 percent of the kinetic energy calculated under paragraph 6.3.3.5.2 will be absorbed by the tire.

6.3.3.5.2.2 160 mph-120 mph. In the second series of 100 landings, the minimum landing speed is 160 mph and the nominal unlanding speed is 120 mph. The unlanding speed must be adjusted so the 44 percent of the kinetic energy calculated under paragraph 6.3.3.5.2 will be absorbed by the tire.

7.0 Requalification tests. Requalification in accordance with paragraph 6.0 of a given load rated tire required as a result of a tread design or material change will automatically qualify the same changes in a lesser load rated tire of the same size, speed rating, carcass, and skid depth provided—

7.1 The lesser load rated tire has been qualified to the applicable requirements specified herein; and

7.2 The ratio of qualification testing load to rated load for the lesser load rated tire does not exceed the same ratio for the higher load rated tire at any given test condition.

[4910-13-C]

FIGURE 1

GRAPHIC REPRESENTATION OF A RATIONAL LOAD-SPEED-TIME TEST CYCLE

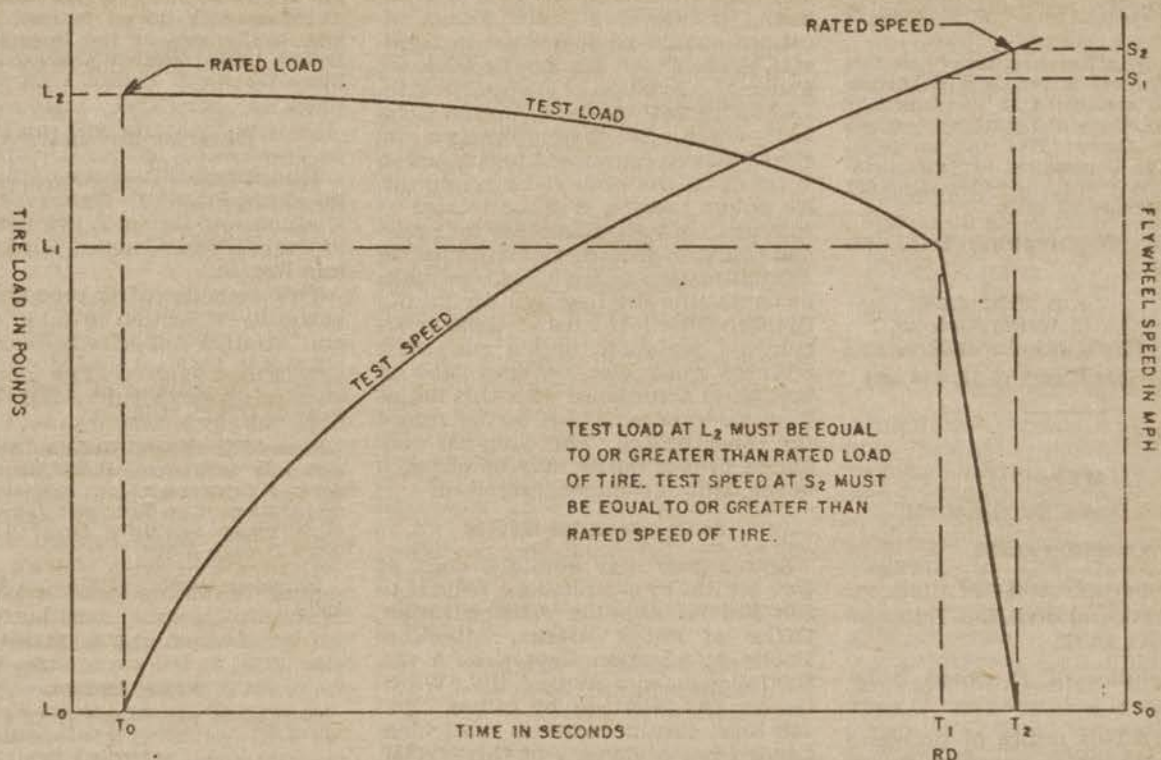
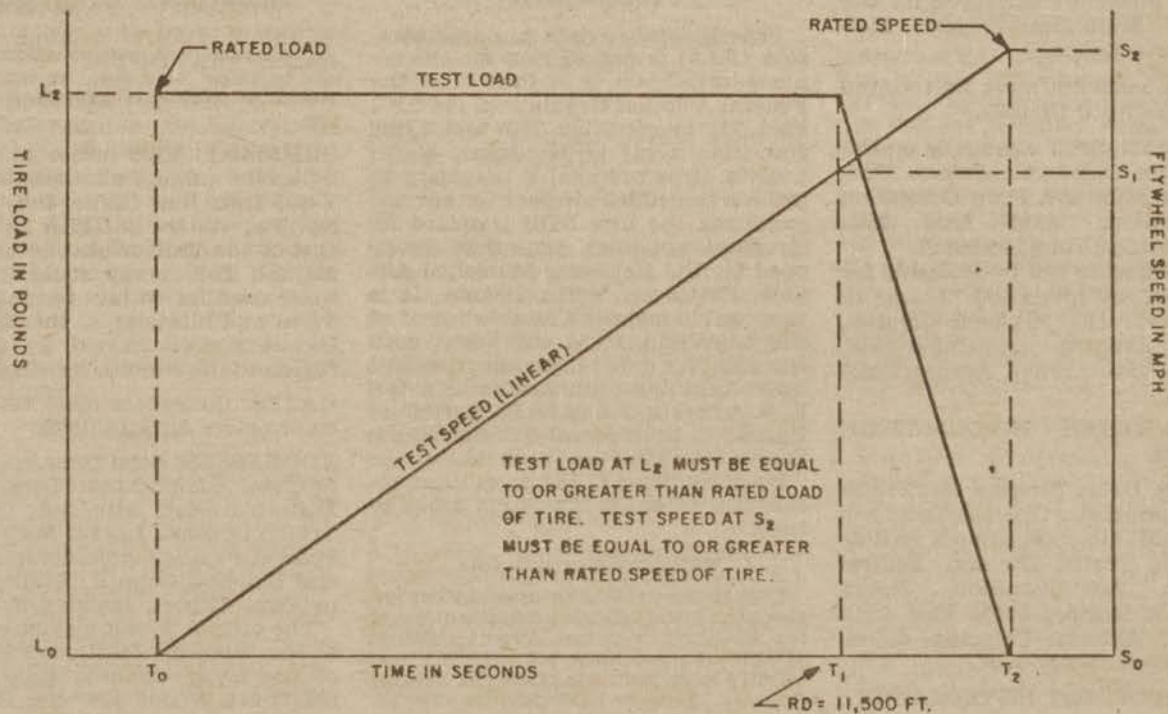


FIGURE 2

GRAPHIC REPRESENTATION OF A STANDARD LOAD-SPEED-TIME TEST CYCLE (ALTERNATE TEST)



PROPOSED RULES

[4910-13-M]

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.45).

NOTE—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Washington, D.C., on March 9, 1979.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 79-7985 Filed 3-16-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 79-RM-051]

TRANSITION AREAS

Proposed Establishment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to establish a 700' and 1,200' transition area at Hettinger, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota.

DATES: Comments must be received on or before April 18, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010.

FOR FURTHER INFORMATION CONTACT:

Pruett B. Helm, Airspace and Procedures Specialists, Operations, Procedures and Airspace Branch (ARM-530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

AVAILABILITY OF NPRM

Any person may obtain a copy of the NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The Federal Aviation Administration (FAA) is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish 700' and 1,200' transition areas at Hettinger, North Dakota. This proposal is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota. It is proposed to make the establishment of the transition areas coincident with the effective date of the new standard instrument approach. Accordingly, the FAA proposes to amend Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending § 71.181 so as to establish the following transition areas to read:

HETTINGER, NORTH DAKOTA

That airspace extending upward from 700' above the surface within a 5.5 mile radius of the Hettinger Municipal Airport (latitude 46°00'48" N., longitude 102°39'00"W.), and within 3 miles each side of the 132° bearing from the Hettinger NDB (latitude 46°00'59"

N., longitude 102°38'55" W.) extending from the 5.5 mile radius area to 8.5 miles south-east of the Hettinger NDB, and that the airspace extending upward from 1,200' above the surface bounded on the north by V-2, on the east by V-169, on the south by V-120, and on the west by the Bowman, North Dakota 1,200' transition area excluding the Bismarck, North Dakota 1,200' transition area.

DRAFTING INFORMATION

The principal authors of this document are Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, office of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of Section 307(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Aurora, Colo., on March 8, 1979.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc 79-7989 Filed 3-16-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-EA-961]

DESIGNATION OF AIRWAY SEGMENT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate an east alternate airway to V-433 from New Castle, Del., to Yardley, Pa., via the MUFLA INT north-east of the Philadelphia International Airport. This airway would bypass airspace used for certain terminal procedures at Philadelphia, thereby reducing congestion caused by en route flights to the Newark terminal.

DATES: Comments must be received on or before April 16, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 78-EA-96, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independ-

ence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch, (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before April 16, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future MPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would designate an east alternate to V-433 from New Castle to Yardley via the INT of the New Castle 058° T (067° M) and the Yardley 196° T (206° M) radials. By designating this route as an airway, coordination and communication time required for its use

would be reduced. Use of the proposed airway segment would help to reduce the congestion of traffic in the Philadelphia and Newark terminal areas.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) as follows:

Under V-433 "Yardley, Pa.," is deleted and "Yardley, Pa., including an E alternate via INT New Castle 058° and Yardley 196° radials," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issue in Washington, D.C., on March 8, 1979.

WILLIAM E. BROADWATER,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc. 79-7984 Filed 3-16-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-RM-34]

DESIGNATION OF ALTERNATE AIRWAY SEGMENTS

Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate two alternate airway segments. One would be an east alternate to V-95 between Durango, Colo., and Gunnison, Colo., and the other would be a west alternate to V-211 between Durango and Cortez, Colo. This action would help to expedite departures and eliminate traffic congestion at Durango.

DATES: Comments must be received on or before April 18, 1979.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 78-RM-34, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received on or before April 18, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would designate V-95E from Durango to Gunnison via the INT of the Durango 082° T (068° M) and the Gunnison 187° T (173° M) radials; and would designate V-211W from Durango to Cortez via the INT of the Durango 249° T (235° M) and the Cortez 150° T (136° M) radials. This action would

help to reduce congestion and departure delays in this area by providing additional routes.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) as follows:

Under V-95 "Gunnison, Colo.," is deleted and "Gunnison, Colo., including an E alternate from Durango to Gunnison via INT Durango 082° and Gunnison 187° radials;" is substituted therefor.

Under V-211 all after "Cortez, Colo., 115° radials;" is deleted and "Cortez, including a W alternate via INT Durango 249° and Cortez 150° radials;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on March 13, 1979.

WILLIAM E. BROADWATER,
Chief, Airspace and
Air Traffic Rules Division.

[FR Doc. 79-8246 Filed 3-16-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-RM-261]

PROPOSED EXTENSION OF FEDERAL AIRWAY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend V-169 from Bismarck, N.Dak., direct to Devils Lake, N. Dak. This route is presently used as a direct route. Designation of this route as an airway would reduce the coordination and communication time required for its use.

DATES: Comments must be received on or before April 18, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 78-RM-26, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received on or before April 18, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would extend V-169 airway from its present terminal at Bismarck direct to Devils Lake and exclude the airspace within the Devils Lake East and West Military Operations Areas (MOAs) during their times of use. This action would reduce the communication and coordination time required for use of the route and would also provide for continuation of the MOA's intermittent use.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) as follows:

In V-169, all after "Dupree, S. Dak.," is deleted and "Bismarck, N. Dak.; to Devils Lake, N. Dak. The airspace from 4,000 feet MSL to 10,000 feet MSL between points 46 miles NE of Bismarck and 18 miles SW of Devils Lake is excluded during the time that the Devils Lake West Military Operations Area is activated by NOTAM. The airspace from 3,500 feet MSL to 10,000 feet MSL between points 18 miles SW and 29 miles SW of Devils Lake is excluded during the time that the Devils Lake East Military Operations Area is activated by NOTAM." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044, and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on March 13, 1979.

WILLIAM E. BROADWATER,
Chief, Airspace and
Air Traffic Rules Division.

[FR Doc. 79-8245 Filed 3-16-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 79-SO-16]

TRANSITION AREA, CLAYTON, ALA.

Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will designate the Clayton, Alabama, transition area and will lower the base of controlled airspace within a 6.5 mile radius of the Clayton Municipal Airport from 1200 to 700 feet AGL to accommodate Instrument Flight Rule (IFR) operations. A new public use instrument approach procedure has been developed for the Clayton Municipal Airport, and the additional controlled airspace is required to protect aircraft conducting Instrument Flight Rule (IFR) operations.

DATES: Comments must be received on or before April 10, 1979.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT:

William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before April 10, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public, regulatory docket.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this

NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate Clayton, Alabama, transition area. This action will provide controlled airspace protection for the IFR operations at Clayton Municipal Airport. If the proposed designation is acceptable, the airport operating status will be changed from VFR to IFR.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 (44 FR 442), of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

CLAYTON, ALA.

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Clayton Municipal Airport (Latitude 31°53'00" N, Longitude 85°29'00" W).

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in East Point, Georgia, on February 28, 1979

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 79-8159 Filed 3-16-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 771 0049]

INLAND EMPIRE ROOFING CONTRACTORS ASSOCIATION

Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a

Spokane, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting that members adhere to any particular price, guarantee, or other condition of sale; or limiting by any means a member's right to give any guarantee, price or other term or condition of sale to its customers. The association is also prohibited from investigating and/or policing its members with regard to prices charged and guarantees imposed in the sale of their products and services.

DATE: Comments must be received on or before May 18, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William C. Erxleben, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174, (206) 442-4655.

SUPPLEMENTARY INFORMATION:

Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

In the matter of Inland Empire Roofing Contractors Association, an unincorporated association; agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Inland Empire Roofing Contractors Association, an unincorporated association, and it now appearing that Inland Empire Roofing Contractors Association, an unincorporated association, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Inland Empire Roofing Contractors

Association, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Inland Empire Roofing Contractors Association is an unincorporated association organized, existing and doing business under and by virtue of the laws of the state of Washington, with its office and principal place of business located at East 130 Sprague Avenue, in the City of Spokane, State of Washington.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to the agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in the disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the com-

plaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner or service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

A. Definitions established for the purpose of the following order provisions are:

1. "Other related services" includes but is not limited to, repairing of roofs, inspecting of roofs, waterproofing and dampproofing of roofs, and estimating costs of repair or installation of roofs.

2. "Others not party hereto" means any individual, individual proprietorship, partnership, firm, corporation, association or any other form of legal or business entity.

II

A. It is ordered that respondent Inland Empire Roofing Contractors Association, an unincorporated association, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize, or maintain, the length or other term of any guarantee;

2. Entering into any contract, agreement, course of conduct, or understanding between itself and others not party hereto to fix, establish, stabilize or maintain any price or other term or condition of sale in connection with the sale and installation of new or re-

placement roofs or for performing other related services.

III

A. It is further ordered that respondent Inland Empire Roofing Contractors Association, an unincorporated association, its successors and assigns, and its agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale and installation of new or replacement roofs or other related services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to any particular guarantee or to any price or other term or condition of sale in connection with the sale and installation of new or replacement roofs or for performing other related services;

2. Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which limits in any way a member's right to give or offer a guarantee or any price or other term or condition of sale to any customer or prospective customer in connection with the sale or installation of a new or replacement roof or for performing other related services;

3. Investigating and/or policing a price or guarantee term charged or imposed by any member of the association or any other person in connection with the installation of new or replacement roofs.

IV

A. It is further ordered that respondent Inland Empire Roofing Contractors Association shall within sixty (60) days after the date of service of this Order, mail a copy to each of its existing members and to each person who was a member at any time from June 30, 1973 to date of service of this Order, and furnish a copy of this Order to each prospective member for a period of five (5) years after the date of service of this Order.

B. It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or any other change in the association which may affect compliance obligations arising out of the Order.

C. It is further ordered that the respondent herein shall within sixty (60) days after service on it of this Order, file with the Commission a report, in

writing, setting forth in detail the manner and form in which it has complied with this Order.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Inland Empire Roofing Contractors Association.

The proposed consent order and material submitted by the Inland Empire Roofing Contractors Association to the Commission that is reasonably related to the merits of the order and is not exempt from disclosure under the freedom of Information Act have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Inland Empire Roofing Contractors Association is an unincorporated association organized and doing business under the laws of the state of Washington and located at East 130 Sprague Avenue, Spokane, Washington 99202.

In its complaint the Commission alleges that the association fixed the length of guarantees for new and replacement roofs. The complaint also alleges that the association agreed not to offer any guarantees for waterproofing and dampproofing work or for damage caused by certain wind conditions.

Pursuant to the consent order, the association has agreed to cease fixing, stabilizing or maintaining terms of guarantees. It has also agreed not to fix, stabilize or maintain any price or other term or condition of sale for new and replacement roofs. Present and future members of the association are to be bound by the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-8251 Filed 3-16-79; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 1]

REGISTRATION FEES TO BE NONREFUNDABLE

Proposed Rule

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commodity Futures Trading Commission is proposing to amend §§ 1.11 and 1.13 of Part 1 of its General Regulations under the Commodity Exchange Act. Under the proposed amendments, application fees for registration with the Commission will not be refundable if registration is denied or if the application is withdrawn, after processing of such application has begun.

DATES: Written comments on the proposed rule must be received by the Commission at its offices in Washington, D.C. on or before May 18, 1979.

ADDRESS: Send comments to: Commodity Futures Trading Commission, 2033 "K" Street, N.W., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Attorney,
Office of the Chief Counsel, Division
of Trading and Markets, Commodity
Futures Trading Commission, 2033
K Street, N.W., Washington, D.C.
20581, (202) 254-8955.

SUPPLEMENTARY INFORMATION: Section 1.11 of the regulations of the Commodity Futures Trading Commission ("Commission") sets forth the fee schedule for the various categories of applicants for registration, or renewal thereof, under the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 1 *et seq.*).¹

Section 1.13 of the Commission's regulations currently provides for notification of registration, or renewal thereof. It also provides for a refund of the application fee if registration is refused.

The authority for the assessment of registration fees is Section 8a(4) of the Act (7 U.S.C. § 12a(4)): "The Commission is authorized—to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof."²

¹The present schedule is as follows: futures commission merchant, \$200 (plus a fee of \$6 for each domestic branch office, correspondent or agent); floor broker and associated person, \$20; and commodity trading advisor or commodity pool operator, \$50. An associated person filing on Form 4-Ra pays no fee.

²Section 8a(4) was first enacted in 1936 (Pub. L. No. 74-675, § 10, 49 Stat. 1500). It

Because the costs incurred in processing and investigating an applicant whose registration is not approved or who withdraws once processing of such application has begun are at least equal to and often exceed the costs incurred by the Commission for a successful applicant,³ the Commission proposes to make the registration fees it collects from persons whose registrations are denied or who withdraw their application once processing has begun non-refundable.

Some associated persons apply for renewal of their registration when they become associated with a different futures commission merchant, even though their registration has not expired and they are not required to refile under the Act or the rules promulgated thereunder. Associated persons who thus file renewal applications in error would continue to receive a refund of their application fee.

The Commission proposes to make these amendments applicable to all applications which would be filed after the effective date of the rules.

The Commodity Futures Trading Commission hereby proposes for adoption §§ 1.11 and 1.134 of Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

1. Section 1.11 would be amended by adding the following concluding sentence:

authorized the Secretary of Agriculture "to fix and establish from time to time fees and charges for registrations and renewals thereof . . . not to exceed \$10 for each . . ." Section 8a(4) was amended in 1955 to remove the \$10 maximum and the authority to set "reasonable" fees was granted to the Secretary. Congress recognized that the \$10 limitation established in 1936 was no longer adequate to recover costs, and that the amendment would give the Secretary the flexibility to adjust fees to meet rising costs. The amendment to Section 8a(4) was recommended by the Department of Agriculture, which stated in its transmittal letter to the Senate that "The proposed amendment would enable the Department of Agriculture to establish a schedule of fees and charges which, taking into account the value to the registrant and with due regard to the public interest, would recover to the fullest extent possible the aggregate cost of registration activities." H.R. REP. No. 1425, 84th Cong., 1st Sess., reprinted in (1955) U.S. CODE CONG. & AD. NEWS 2683-4. The Commission assumed the Secretary of Agriculture's registration function under the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, Sec. 103, 88 Stat. 1392.

³An applicant who is not currently registered under the Act is subject to a fitness evaluation. The Commission conducts a background examination of applicants (and key employees of applicant firms, where applicable) with the assistance of the Federal Bureau of Investigation and other federal agencies to determine fitness for registration. If warranted, a further investigation is made to determine if the applicant should be registered.

§ 1.11 Registration fees; form of remittance.

*** The fees shall be non-refundable, unless the applicant withdraws his application before any processing of that application has occurred.

2. Section 1.13 would be amended as follows:

- (a) By changing the section heading;
- (b) By deleting the concluding sentence; and
- (c) By revising the text as follows:

§ 1.13 Notification of Registration.

Upon receipt of an application for registration (or renewal thereof) the Commission will, if registration is granted, notify the registrant that he has been registered under the Act.

(Sec. 2a(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4A(j)); Sec. 8a(4), Pub. L. 74-675, 49 Stat. 1500 (7 U.S.C. 12a(4)), as amended, Pub. L. 84-248, 69 Stat. 535, Pub. L. 90-258, 82 Stat. 33, Pub. L. 93-463, 88 Stat. 1392; sec. 8a(5), Pub. L. 74-675, 49 Stat. 1501 (7 U.S.C. 12a(5)), as amended, Pub. L. 90-258, 82 Stat. 33, Pub. L. 93-463, 88 Stat. 1392)

Issued in Washington, D.C., on March 13, 1979, by the Commission.

GARY L. SEEVERS,
Acting Chairman, Commodity
Futures Trading Commission.

[FR Doc. 79-8109 Filed 3-16-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4697]

NATIONAL FLOOD INSURANCE PROGRAM

Propose Flood Elevation Determinations For
The Town Of Easthampton, Hampshire
County, Massachusetts; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 50471 of the FEDERAL REGISTER of October 30, 1978.

FOR FURTHER INFORMATION
CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or toll-free line 800-424-8872. Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410

The following locations:

Source of Flooding	Location	Elevation in feet (national geodetic vertical datum)
Broad Brook	1,220 feet downstream of Hendrick Street.	175
	2,745 feet downstream of Hendrick Street.	183

Should be corrected to read:

Source of Flooding	Location	Elevation in feet (national geodetic vertical datum)
Broad Brook	Approximately 1,056 feet upstream of Hendrick Street.	175
	Approximately 2,745 feet upstream of Hendrick Street.	183

National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.

In accordance with Section 7 (c) (4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc 79-7879 Filed 3-16-79; 8:45 am]

[4110-12-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 76]

DEBARMENT AND SUSPENSION FROM ELIGIBILITY FOR FINANCIAL ASSISTANCE

Proposed Rulemaking

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Health, Education, and Welfare is proposing to add regulations to permit the debarment of organizations and individuals from eligibility to receive a grant or other form of financial assistance from the Department of Health, Education, and Welfare. The regulations also include provisions for temporary suspension when grounds for debarment exist, or there is an out-

standing indictment for a criminal offense which would be grounds for debarment upon conviction. The regulations are necessary because there have been instances of fraud or abuse by persons who are responsible for Federal funds, and the regulations will establish a procedure, with due process safeguards, to render these persons ineligible to receive Federal financial assistance for a reasonable period of time.

DATES: Comments must be received on or before May 18, 1979, in order to assure that the Secretary will be able to consider such comments in preparing the final regulations.

ADDRESS: Send written comments on the proposed rules in duplicate to Legal Advisor, NIH, Office of the General Counsel, Room 2B-50, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

FOR FURTHER INFORMATION
CONTACT:

William G. Ketterer, Senior Attorney, NIH, Address: Same as above, Telephone: (301) 496-6043.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Secretary of the Department of Health, Education, and Welfare, proposes to add a new Part 76 of Title 45, Code of Federal Regulations. Each year HEW awards millions of dollars in Federal financial assistance to individuals and institutions in the non-Federal sector to support important programs related to health, education and welfare, which are authorized by Congress and administered by this Department. While every effort is made to assure that every dollar of these monies is properly expended solely for the purposes of these programs, there have been instances of fraud or abuse by persons whose conduct evinces a failure to adhere to sound fiscal practices or a lack of business integrity and honesty which directly affects their present responsibility to account for and administer Federal funds. There should be an established procedure, with appropriate due process safeguards, to render such persons ineligible to receive Federal assistance for a reasonable period of time, in order to protect the Government's interest and assure public confidence in the Department's programs. Following is a summary of the new regulations:

(1) The regulations authorize the Secretary to debar an institution or individual, and any affiliate thereof, in the public interest for any one of eight specified causes.

(2) The period of debarment will be for a reasonable definite period of time commensurate with the reason for debarment except that a debar-

ment based on discriminatory practices shall be for an indefinite period, until the cause is removed or acceptable assurances given.

(3) Affiliates of the offending organization or individual may be included in the debarment if the debarment is based on the complicity of the affiliate in the cause for debarment.

(4) All institutions or individuals and affected affiliates will be given an opportunity for a hearing before a debarment action is final.

(5) Institutions or individuals and affected affiliates may be suspended pending debarment deliberations only if there are compelling reasons to protect the interests of the Federal Government.

(6) The proposed regulations provide for publication in the FEDERAL REGISTER of the names of debarred persons, in order to provide constructive notice to future grantees and others responsible for administering Federal funds, who would be prohibited under the regulations from awarding subgrants or contracts to debarred persons. However, it is recognized that other reasonable methods may exist for informing private institutions awarded Federal funds (for example, maintenance of internal lists of debarment actions which would be disclosed only to outside organizations which have a need to know) and public comment is specifically requested on this issue.

(7) The proposed regulations would allow debarment for discriminatory practices on grounds of race, color, national origin, sex, age, or handicap. The Department already has regulations on nondiscrimination in 45 CFR Part 80, *et seq.* Public comment is requested on the need for the added remedy the debarment regulations would offer in this area.

(8) As proposed, the debarment regulations would provide the Department with a means for taking action against organizations and individuals which is in addition to any other means currently available under Federal law or program regulations. Individual programs within the Department already have procedures for dealing with violators of program requirements. The Department proposes to retain the discretion to use individual program procedures, or Departmentwide debarment procedures, depending on the nature or seriousness of the violations. Public comment is sought on this approach.

(9) The proposed regulations would permit debarment of State and local government agencies, as well as private organizations and individuals. Public comment is solicited as to whether this coverage should be narrowed by excluding State and local government agencies, except perhaps

for institutions of higher education and hospitals.

(10) Public comment is sought as to whether the proposed grounds for debarment, in § 76.10, are too broad in scope. For example, as now proposed, serious violations of the requirements of a formula grant program by a recipient of such a grant could serve as the basis for debarment that recipient from eligibility for discretionary grants under these regulations, even though the debarment would not affect the organization's eligibility for formula grants.

(11) The proposed regulations do not apply to the award of contracts which are covered in 41 CFR Part 3-1.6, although debarment from contracting is a cause for debarment from financial assistance under these regulations. Consideration is being given to combining the two separate debarment regulations into one set of regulations covering all types of awards.

It is, therefore, proposed to add to 45 CFR a new Part 76, as set forth below:

Dated: March 6, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

**PART 76—DEBARMENT AND SUSPENSION
FROM ELIGIBILITY FOR FINANCIAL ASSISTANCE**

Subpart A—General

Sec.

- 76.1 The scope and purpose of these regulations.
76.2 Definitions.

Subpart B—Debarment

- 76.10 Causes for debarment.
76.11 Conditions for debarment.
76.12 Period of debarment.
76.13 Scope of debarment.
76.14 Procedures—Hearings.
76.15 Procedures—Determination of hearing examiners; review by Secretary.
76.16 Restrictions on debarred institutions and individuals.
76.17 Publication of notice in FEDERAL REGISTER of results of debarment actions.

Subpart C—Suspension

- 76.20 Causes for suspension.
76.21 Period and scope of suspension.
76.22 Notice of suspension.
76.23 Restrictions during period of suspension.
76.24 Publication of notice in FEDERAL REGISTER of results of suspension actions.

AUTHORITY: 5 U.S.C. 301.

Subpart A—General

- § 76.1 The scope and purpose of these regulations.

(a) *Debarment.* Subpart B prescribes policies and procedures relating to debarment for cause of public and private institutions or individuals (and their affiliates) from eligibility under discretionary programs of financial as-

sistance, which are awarded or administered by HEW. Debarment is invoked to exclude institutions and individuals from participation in HEW discretionary programs of financial assistance to protect the interests of the Government, and is not intended to be a penalty or punishment. This measure shall be instituted only for as long as necessary to protect the interests of the Government and financial assistance is precluded only during the period of debarment.

(b) *Suspension.* Subpart C sets forth the procedures for temporary suspension of institutions or individuals (and their affiliates) from eligibility under HEW discretionary programs of financial assistance. Because it is a drastic step taken upon what may be incomplete information, it shall be used cautiously and only when the Secretary believes that grounds for debarment exist (or there is an outstanding indictment for a criminal offense which is grounds for debarment) and there are compelling reasons why immediate action must be taken before debarment proceedings can be completed. In assessing whether adequate evidence exists for invoking suspension, consideration shall be given to the evidence available, to the existence or absence of corroboration as to allegations, as well as to the inferences which may properly be drawn from the existence or absence of facts and the irreparable nature of the harm caused by continuing the institution's or individual's eligibility pending debarment proceedings. This assessment shall include an examination of basic documents, such as contracts, grants, inspection reports, and correspondence. A suspension may be terminated or modified whenever it is determined to be in the interest of the Government to do so.

(c) *Relationship to other program responsibilities.* The regulations of this part deal solely with the debarment and suspension of individuals and organizations for future awards and do not limit the discretion of program officials to take into account the fiscal and administrative capabilities of applicants in connection with particular applications for financial assistance. Termination and suspension for cause of ongoing grants are separate matters which are governed by HEW's grant administration regulations, 45 CFR Part 74, Subpart M. However, debarment and suspension under this part precludes all future awards, including noncompetitive continuation and renewal awards, of financial assistance for a previously supported activity.

§ 76.2 Definitions.

As used in this part:
"Affiliate" means an institution which controls, or is controlled by, or is under common control with, an-

other institution or individual. For example, a university foundation and the "parent" university are affiliates if one has the power to control the other.

"Discretionary program" means a program of financial assistance which is awarded on the basis of merit or program need and to which an applicant is not entitled as a matter of law.

"Discriminatory practices" means discrimination against an individual on grounds of race, color, or national origin, as prohibited under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and implementing regulations (45 CFR Part 80); discrimination on the basis of sex as prohibited under Title IX of the Education Amendments of 1972 (20 U.S.C. 161) and Titles VII and VIII of the PHS Act (42 U.S.C. 292, 296) and implementing regulations (45 CFR Parts 83 and 86); discriminatory employment practices as prohibited under Executive Order 11246; discrimination on account of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101); and discrimination on the basis of handicap as prohibited by section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 706) and implementing regulations (45 CFR Part 84).

"Debarment" and "debarred" mean the exclusion from eligibility for financial assistance awarded or administered by HEW under discretionary programs for a reasonable, specified period of time, commensurate with the seriousness of the cause resulting in the debarment, except that where debarment is on grounds of discriminatory practices against individuals otherwise entitled to participate under the program involved, such debarment shall be for an indefinite period pending the elimination or correction of such practices, or assurances given, as required by law.

"Financial assistance" means grants and awards (including fellowships, traineeships and National Research Service Awards), cooperative agreements, loans, loan guarantees, and interest subsidies, including noncompetitive continuation awards for any of the foregoing.

"HEW" means the Department of Health, Education, and Welfare and its operating agencies and component organizations.

"Individual" means a natural person.

"Institution" means any public or private corporation, agency, organization, or institution, which would otherwise be eligible to receive financial assistance under HEW discretionary programs.

"Respondent" means an institution, individual or affiliate who is the subject of a debarment action under §§ 76.14 and 76.15.

"Secretary" means the Secretary of Health, Education, and Welfare and any officer or employee of HEW to whom the authority involved has been delegated.

"Suspension", unless the context otherwise requires, means an immediate exclusion from eligibility for financial assistance under discretionary programs without prior hearing pending completion of debarment or other proceedings, as applicable.

Subpart B—Debarment

§ 76.10 Causes for debarment.

Subject to the conditions set forth in § 76.11 and the procedural requirements set forth in §§ 76.14 and 76.15, the Secretary may debar an institution or individual, and any affiliate thereof, in the public interest for any of the following causes.

(a) Conviction for any criminal offense committed as an incident to obtaining or attempting to obtain a public or private contract or any form of financial assistance (or subcontract or subgrant thereunder), or as an incident to performance of any contract, or any form of financial assistance (or any subcontractor or subgrant thereunder);

(b) Conviction under the Organized Crime Control Act of 1970, or conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility to account for or administer Federal funds;

(c) Conviction under the Federal Antitrust Statutes arising out of the submission of bids, applications or proposals;

(d) Violation of the applicable statute, regulations, or other terms and conditions of a previous award of financial assistance, of a character which is determined to be so serious as to justify debarment;

(e) A record of unsatisfactory performance (or failure to perform) in connection with one or more previous awards of financial assistance, except that unsatisfactory performance (or failure to perform) caused by acts beyond the control of the institution or individual shall not be considered a basis for debarment;

(f) Discriminatory practices which are prohibited by law;

(g) Debarment from Government contracting or subcontracting by HEW or another Government agency;

(h) Any other cause significantly affecting responsibility as a recipient of Federal funds of such serious nature as determined by the Secretary to warrant debarment.

§ 76.11 Conditions for debarment.

(a) *General.* Unless otherwise required by law, the existence of any of the causes set forth in § 76.10 does not effectuate a debarment or necessarily require that an institution or individual be debarred. In each instance, a decision to debar shall be made within the discretion of the Secretary and shall be rendered solely in the best interest of the Government. In addition, mitigating factors, such as the seriousness of the offense, failure, or inadequacy of performance, may be considered in deciding whether debarment is warranted.

(b) The existence of a cause set forth in § 76.10(a), (b), and (c) (relating to conviction of criminal offenses) shall be established by proof of judgment of criminal conviction by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in a reversal, debarment shall be removed on the Secretary's own motion or upon the written request of the institution or individual concerned (unless other cause for debarment exists).

(c) The existence of causes set forth in § 76.10(d), (e), (f) and (h) (relating to violation of grant terms and conditions, performance, and discrimination) shall be established by evidence which the Secretary determines to be clear and convincing in nature.

(d) Debarment on the cause set forth in § 76.10(g) (relating to debarment from Government contracting) may be based entirely on the record of facts obtained by the debarring agency, or upon a combination of such facts and additional facts.

§ 76.12 Period of debarment.

(a) *General.* Debarment for causes other than discriminatory practices under § 76.10(f) or debarment from contracting under § 76.10(g) shall be for a reasonable, definite period of time commensurate with the seriousness of the offense or failure or inadequacy of performance.

(b) *Contract debarment.* Where debarment is based upon debarment from contracts, the period of debarment shall run concurrently with the period of the contract debarment.

(c) *Termination or reduction of period.* Except where prohibited by statute, debarment may be terminated, or the period thereof may be reduced, by the Secretary, on the Secretary's own initiative or upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of conviction, bona fide change of ownership or management, or the elimination or correction of the underlying grounds for which the debarment was

Imposed or other mitigating circumstances. The Secretary may require, as a condition to termination of the debarment period, restitution to HEW by the debarred party for losses sustained by HEW.

(d) *Discriminatory practices.* Debarment for violation of applicable regulations, or terms or conditions, prohibiting discriminatory practices, shall be for an indefinite period of time until the discriminatory practices have been eliminated, corrective action taken, or satisfactory assurances given, as determined by the responsible HEW official under the applicable regulations concerned.

(e) *Reinstitution of debarment.* Except where debarment is based upon conviction of a criminal offense, at the end of the termination period the Secretary may reinstitute debarment, through the debarment procedures set forth in this subpart, if the causes have not been corrected or adequate assurance given that the practices will not be repeated.

§ 76.13 Scope of debarment.

(a) *Affiliates.* a debarment may include affiliates of an institution or individual which have had notice and opportunity for a hearing in accordance with §§ 76.14 and 76.15. Each decision to include a known affiliate within the scope of a proposed debarment is to be made on a case-by-case basis, after giving due regard to all the relevant facts and circumstances.

(b) *Imputing conduct to institution.* Conduct of an individual may be imputed to the institution with which he or she is associated by employment or otherwise, where such conduct was accomplished within the course of his or her official duty or under circumstances in which responsible officials of the institution knew or should have known of the conduct.

(c) *Individuals involved in debarable activities.* Where an institution is involved in conduct justifying debarment under this part, any individual who was involved in the commission of the conduct in question may also be debarred.

§ 76.14 Procedures—Hearings.

(a) *Initiation of action.* When the Secretary seeks to debar an institution or individual, or any affiliate thereof (called "respondent" for purposes of §§ 76.14 and 76.15), respondents shall be served with written notice by registered or certified mail, return receipt requested, from the Secretary. The notice shall:

(1) State that debarment is being considered;

(2) Set forth the reasons for the proposed debarment and the proposed length of time; and

(3) Indicate that the respondent will be accorded an opportunity for a hearing if the respondent so requests and the request is received within 30 days after the date of mailing of the notice to the respondent's last known address.

(b) *Hearing.*—(1) *Request for hearing.* Any respondent that has been notified of a proposed action is entitled to request an opportunity to be heard and to be represented by counsel. A hearing request shall be made in writing addressed to the Secretary or other official proposing the action. If at the end of such 30 day period, no request has been received, it may be assumed that an opportunity to be heard is not desired, and the Secretary shall proceed to make a final determination and so notify the respondent.

(2) *Notice of hearing.* Upon receipt of a request for an opportunity to be heard, a hearing examiner shall be appointed by the Secretary and shall arrange a prompt and timely hearing. Notice of the time and place of such hearing shall be in writing, transmitted by registered or certified mail, return receipt requested, and shall include a statement indicating the nature of the proceedings and their purpose. It shall be within the discretion of the hearing examiner to determine the hearing place. In determining the hearing place, the hearing examiner shall consider the convenience of the parties and the public interest.

(c) *Hearing procedures.* (1) Hearings shall be conducted by a hearing examiner of HEW.

(2) HEW shall be represented by the General Counsel or his designee.

(3) A transcribed record shall be made of the proceedings and shall be made available to the respondent upon request, upon payment of any appropriate fee prescribed under the HEW Freedom of Information Act regulations (45 CFR Part 5).

(4) Formal rules of evidence and procedures applicable to proceedings in a court of law will not be applied.

(d) *Scope of hearing; sufficiency of evidence.* The scope of the hearing and sufficiency of evidence shall be governed by the provisions of § 76.11.

§ 76.15 Procedures—Determination of hearing examiners; review by Secretary.

(a) After completion of the hearing, the hearing examiner shall make a written determination on the evidence presented, including where appropriate the extent to which the determination applies to affiliates named in the action. The hearing examiner's determination shall be transmitted to the Secretary, and to all respondents by registered or certified mail, return receipt requested.

(b) The hearing examiner's determination shall be final unless within 60 days the Secretary decides, on his own motion or at the request of a respondent, or the General Counsel to review the findings of the hearing examiner.

(c) Where a review is granted, the determination by the Secretary shall be final and shall be based solely on the record of the hearing. It shall fully recite the evidentiary grounds upon which the Secretary's determination is made.

(d) Each determination shall become part of the record.

(e) Notice of the Secretary's decision to review the hearing examiner's determination and subsequent determination by the Secretary, shall be given in writing to all respondents by registered or certified mail, return receipt requested.

§ 76.16 Restrictions on debarred institutions and individuals.

(a) *General restrictions.* Institutions and individuals (and their affiliates) debarred under this subpart shall be ineligible during the period of debarment to receive any form of financial assistance under any discretionary program awarded or administered by HEW; applications or requests for financial assistance received under any discretionary program shall not be considered and shall be returned with a statement of the reasons. However, when it is determined essential in the public interest by the Secretary, an exception may be made to permit an institution or individual to apply for and receive support under a particular program on the same basis as other eligible applicants under the program concerned. In addition, where grounds exist, the Secretary may also proceed to terminate or suspend for cause ongoing funded grants awarded to a debarred person, as authorized by 45 CFR Part 74, Subpart M.

(b) *Subcontracting and subgranting.* Debarred institutions and individuals shall be ineligible to receive contracts, subcontracts and subgrants under any form of financial assistance awarded or administered by HEW; and the responsible HEW official and recipients of financial assistance, as applicable, shall decline to approve contracting, subcontracting, or subgranting with that institution or individual, unless it is determined by the Secretary to be essential in the best interests of the Government to grant such approval.

(c) *Individuals.* Debarred individuals shall be ineligible to serve or participate under any form of financial assistance awarded or administered by HEW under discretionary programs, including personnel responsible for the conduct or performance of such awards, or for the administration of

Federal funds. Recipients of financial assistance shall be responsible for compliance with this provision, which constitutes a condition of all awards of financial assistance. Applications for financial assistance proposing debarred individuals to serve as principal investigators, project directors, or those responsible for the administration of Federal funds, or in any other capacity, shall not be considered and shall be returned to the applicant with a statement of the reason therefor.

§ 76.17 Publication of notice in Federal Register of Results of debarment actions.

(a) *Contents.* When an institution, individual, or affiliate is debarred under this subpart, HEW shall publish a notice in the *FEDERAL REGISTER* containing as a minimum the following information:

(1) The names of the debarred institutions, individuals, and affiliates, and their addresses;

(2) The authority and reasons for each action;

(3) The extent of restrictions imposed, including effective dates; and

(4) The termination date or statement that debarment is for an indefinite period of time.

(b) A notice shall also be published in the *FEDERAL REGISTER* when a debarment is ended prior to its specified termination date.

(c) The Secretary shall also establish and maintain a current, consolidated list of debarred institutions and individuals for purposes of administering affected discretionary programs.

Subpart C—Suspension

§ 76.20 Causes for suspension

Whenever the Secretary believes that grounds for debarment exist (or there is an outstanding indictment for a criminal offense which is grounds for debarment under § 76.10), and, in order to protect the interests of the United States, immediate action is necessary, he may suspend an institution, individual, and any affiliate thereof, in accordance with procedures of this subpart. This action shall be taken by the Secretary where there are compelling reasons why the interests of the United States would be jeopardized by waiting for completion of debarment proceedings under Subpart B.

§ 76.21 Period and scope of suspension.

(a) A suspension shall be for a temporary period pending the completion of an investigation and such administrative or legal proceedings as may result.

(1) Except where suspension is based on criminal indictment, debarment proceedings shall be initiated within 6 months after notice of suspension, in

accordance with Subpart B, or the suspension shall be terminated automatically. When the debarment proceedings are initiated within the six month period, the suspension shall continue in effect pending the completion of debarment proceedings or for a period not to exceed 12 months after the date of the notice of proposed debarment, whichever first occurs.

(2) When suspension is based upon criminal indictment, it shall continue in effect pending completion of the criminal proceedings, or for 18 months, whichever first occurs.

(b) Suspension may include all known affiliates of an institution or individual who have received notice and opportunity for hearings as set forth in § 76.22.

(c) A decision to include affiliates in a proposed suspension is a separate determination which shall be made on a case-by-case basis.

(d) The conduct of an individual may be imputed to the institution with which he or she is associated by employment or otherwise when the conduct involved was performed within the course of their official duties, or under circumstances in which responsible officials of the institution knew or should have known of the conduct.

§ 76.22 Notice of suspension.

When an institution or individual or any affiliate thereof is suspended, the Secretary shall furnish all the affected parties immediately with a notice of the suspension by certified or registered mail, return receipt requested. The notice of suspension shall state that:

(a) The suspension is based on (1) an outstanding indictment for a criminal offense which is grounds for debarment under § 76.10 or (2) reasonable evidence that the institution or individual has committed irregularities of a serious nature which would be grounds for debarment under § 76.10 (The notice shall identify the indictment or describe the nature of the irregularities, in general terms, without disclosing the Government's evidence);

(b) The suspension is for a temporary period pending the completion of debarment or other proceedings, as applicable.

(c) Bids, proposals, and applications for financial assistance will not be solicited or accepted from the institution or individual and, if received, will not be considered, and awards of any form of financial assistance under HEW discretionary programs may not be made unless it is determined by the Secretary to be in the best interest of the Government;

(d) The institution or individual will not be eligible for the award of a subcontract or subgrant. Whenever the

institution or individual is proposed as a subcontractor or subgrantee, the responsible HEW official will decline to approve subcontracting or subgranting with that institution or individual in any instance in which consent is required of the Government before the subcontract or subgrant is made, unless it is determined by the agency to be in the best interest of the Government to grant approval;

(e) The suspension is effective throughout HEW; and

(f) A hearing as to whether the suspension should be continued will be provided upon request of the institution or individual or any affected affiliate. The hearing shall be conducted, to the extent practical in accordance with the procedures set forth in §§ 76.14 and 76.15.

§ 76.23 Restrictions during period of suspension.

During a period of suspension of an institution or individual and any affiliate, the following policies and procedures shall be applicable:

(a) *General restriction.* Bids, proposals and applications for financial assistance shall not be solicited or accepted from the suspended institutions or individuals. If received, bids, proposals, and applications for financial assistance shall not be considered and awards of financial assistance shall not be made unless it is determined by the Secretary to be in the best interests of the Government.

(b) *Subcontracting and subgranting.* Suspended institutions and individuals shall be ineligible to receive contracts, subcontracts and subgrants under any form of financial assistance awarded or administered by HEW; and the responsible HEW official and recipients of financial assistance, as applicable, shall decline to approve contracting, subcontracting or subgranting with that institution or individual, unless it is determined to be essential in the best interests of the Government to grant such approval.

(c) *Individuals.* Suspended individuals shall be ineligible to serve or participate under any form of financial assistance awarded or administered by HEW under discretionary programs, including personnel responsible for the conduct or performance of such awards, or for the administration of Federal funds. Recipients of financial assistance shall be responsible for compliance with this provision, which constitutes a condition of all awards of financial assistance. Applications for financial assistance proposing suspended individuals to serve as principal investigators, project directors, or those responsible for administration of Federal funds, or in any other capacity, shall not be considered and shall

be returned to the applicant with a statement of the reason therefor.

§ 76.24 Publication of notice in Federal Register of results of suspension actions.

(a) When an institution or individual is suspended under this subpart, HEW shall publish a notice in the FEDERAL REGISTER containing as a minimum the following information:

(1) The names of the suspended institutions and individuals, and any affiliates, and their addresses;

(2) The authority and reasons for each action;

(3) The extent of restrictions imposed, including effective date; and

(4) Statement that the suspension is for a temporary period of time, pending the completion of debarment or other proceedings, as applicable.

(b) A notice shall also be published in the FEDERAL REGISTER when a suspension is ended.

(c) The Secretary shall also establish and maintain a current, consolidated list of suspended institutions and individuals for purposes of administering affected discretionary programs.

(FR Doc 79-8152 Filed 3-16-79; 8:45 am)

[4110-12-M]

Office of the General Counsel

[45 CFR Parts 205, 206, 228, 234]

CASH ASSISTANCE, MEDICAL ASSISTANCE, AND SOCIAL SERVICE PROGRAMS

Applications, Eligibility Determinations, Assistance Payments, and Fair Hearings

AGENCY: Department of Health, Education and Welfare.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Department of Health, Education and Welfare plans to revise and recodify its regulations on applications, eligibility determinations, assistance payments, and fair hearings in the AFDC, Medicaid, and Social Services programs. Existing regulations will be simplified, clarified, and reorganized. Where appropriate the revised regulations will include current procedures not reflected in the existing regulations. The Department, in revising its regulations, will also include the review of substantive policies affecting these programs. For example, we are considering the following specific subject areas in the application and hearing process:

1. Application.

a. Obtaining an application form.

b. Length and complexity of application forms.

c. Assistance by the agency in the application process.

d. Verification and documentation requirements.

2. Eligibility determination.

a. Informal denials.

b. Rules on date of initial entitlement, or retroactive entitlement in Medicaid.

c. Timeliness in determination of eligibility.

d. Adequacy of decision notices.

3. Assistance Payment.

a. Delay in payment.

b. Protective, vendor, and two-party payment.

4. Fair hearing procedure.

a. General system of hearings, levels of appeal.

b. Request for hearing, oral requests, time limitations.

c. Continuation of benefits pending hearing.

d. Availability of information to claimant.

e. Administrative settlements, informal conferences.

f. Appeal of hearing decision.

g. Concurrent AFDC and Medicaid hearings.

The application and eligibility determination regulations are the subject of a petition for rulemaking under the AFDC program; the petition is included as an appendix to this Notice. HEW will consider public comment on the issues raised by the petition. The Office of General Counsel will coordinate this joint recodification project involving the Health Care Financing, the Human Development Services and the Social Security Administration.

ADDRESS: Comments should be sent to: Mr. Ira Goldstein, Director, Division of Policy, Office of Family Assistance, Room 4111, Mary E. Switzer Building, 330 "C" Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Inez Smith Reid, Deputy General Counsel for Regulation Review, Room 716-E, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245-7542.

Dated: March 9, 1979.

Approved:

F. PETER LIBASSI,
General Counsel.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PETITION OF WELFARE RIGHTS ORGANIZATIONS—FRANKLIN COUNTY WELFARE RIGHTS ORGANIZATION, DOWNTOWN WELFARE ADVOCATE CENTER, OAKLAND COUNTY WELFARE RIGHTS ORGANIZATION, SIMPSON COUNTY WELFARE RIGHTS ORGANIZATION, AND HOUSTON WELFARE RIGHTS ORGANIZATION FOR RULEMAKING TO IMPROVE THE APPLICATIONS PROCESS IN THE AFDC PROGRAM

Submitted May 11, 1978.

Petitioners: Franklin County Welfare Rights Organization, P.O. Box 15150, Columbus, Ohio 43215; Downtown Welfare Advocate Center 853 Broadway, Room 1105, New York, New York 10003; Oakland County Welfare Rights Organization, 70 Whittemore, Pontiac, Michigan 48058; Simpson County Welfare Rights Organization, 509 Dixie Avenue, Mendenhall, Mississippi 39114; Houston Welfare Rights Organization, 429 Neyland, Houston, Texas 77022.

TABLE OF CONTENTS

Introduction.
Section I. Petitioners.
Section II. An Overview.
Section III. Problems in the Applications Process.
A. Difficulties Of Access To Welfare Centers.
B. Persons Are Denied Benefits Without Even Being Allowed To File An Application.
C. Application Forms Deter Or Delay Filing Of Applications.
D. Documentation And Verification Requirements Are Severely Abused.
E. Determinations Of Eligibility Are Seriously Delayed And Are Inadequately Explained.
Section IV. Action To Be Taken by HEW.
Conclusion.
Section V. Attachment: Recommendations for SRS Action to Improve the Applications Process.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PETITION OF WELFARE RIGHTS ORGANIZATIONS—FRANKLIN COUNTY WELFARE RIGHTS ORGANIZATION, DOWNTOWN WELFARE ADVOCATE CENTER, OAKLAND COUNTY WELFARE RIGHTS ORGANIZATION, SIMPSON COUNTY WELFARE RIGHTS ORGANIZATION, AND HOUSTON WELFARE RIGHTS ORGANIZATION FOR RULEMAKING TO IMPROVE THE APPLICATIONS PROCESS IN THE AFDC PROGRAM

Submitted May 11, 1978.

This petition is submitted to demonstrate the urgent need for new federal regulations, models and guidelines to improve the processing of applications for Aid to Families With Dependent Children (AFDC) benefits, and to demand HEW action to respond to this need.

INTRODUCTION

Many desperately impoverished families suffer needless and untold harm each day because of the poor administration of the AFDC applications process.

ess. Families are discouraged from completing applications, endure hardship for long periods of time before benefits are provided, and are humiliated and degraded in the process of applying for the benefits they are entitled to receive. Many of these problems could be cured or made less severe by better federal policies concerning the applications process. Speedy action is necessary in light of the seriousness of the problems and the ultimate responsibility of the Secretary for the proper administration of the AFDC program.

This petition for rulemaking is divided into five parts: (1) A description of petitioners, (2) an overview of the problems in the applications process, (3) a more detailed description of the problems to be addressed, with examples of current practices from petitioners' communities, (4) an itemization of the types of changes that should be considered by the agency, and (5) an attachment consisting of material previously submitted to HEW on these points.

Petitioners urge HEW to decide to develop new regulations, models and guidelines for the applications process; to notify the public promptly of that decision; to seek suggestions from all concerned organizations, individuals, and agencies; and then to propose new regulations for comment. Petitioners also seek an opportunity to meet with the agency to discuss these matters further and to provide additional information and suggestions.

I. PETITIONERS

Petitioners are organizations of poor persons in Franklin County (Columbus), Ohio; New York City; Oakland County (Pontiac), Michigan; Simpson County, Mississippi; and Houston, Texas. Petitioners have been particularly concerned about the administration of the public assistance programs in their communities, and have been actively involved at the state and local level in assisting AFDC applicants in their efforts to obtain financial assistance. Petitioners have sought local remedies to address the policies and practices which have prevented many applicants from obtaining timely assistance. Petitioners' experience in this area has led them to the conclusion that many of the barriers that confront applicants are persistent problems that must be addressed at the national level as well, and that HEW has a major responsibility in this area which it must at last meet.

II. AN OVERVIEW

The applications process is perhaps the most critical part of the AFDC program. Typically a family first coming to a welfare office has already exhausted all other possible sources of

aid and is looking to the welfare agency as a last resort. Because of hostility by members of the public toward those who are dependent, the applicant usually is not only in immediate need of assistance, but is often uncomfortable about having to ask for such help. This creates a situation in which the many unnecessary obstacles we describe herein may discourage even the neediest applicant.

The first problem is gaining access to the system. The applicant has to find out where to apply, and then determine how to get there. Outside of large urban areas applicants with no access to public transportation frequently travel 25 or 50 miles only to be turned away, since many welfare centers have imposed quotas which are filled in the early morning hours. Even those who do get in may have to wait all day before being seen by anyone.

The applicant's first contact is often with a clerk or receptionist who "prescreens" all potential applicants. The prescreener, who usually has no real training in making eligibility determinations, often informs applicants that it would be a waste of time to fill out an application form. Many potential applicants simply leave at this point, assuming that this is the way an application for aid is made and that there is no review or appeal of the denial.

If the applicant does receive an application form, other problems arise. In most states application forms have become unnecessarily long and complicated, and few workers offer any assistance to the applicant. The situation is even worse for non-English speaking applicants as the forms are generally available only in English. Once the form is completed, many states will not accept it for filing until there has been an interview, and interviews may not be scheduled for several weeks.

The next set of barriers that must be overcome are the verification requirements. Some offices refuse to accept the application form until all verifying documents have been obtained. Whether or not the application form has been accepted, applicants may be told to obtain all sorts of specific documents, most of which are not readily available and many of which have no relationship to any valid eligibility criterion. No offer is made to help get the documents or to reimburse the applicant for any costs involved. Thus the applicant, already destitute, must run all over to get copies of school records, apply for social security numbers, obtain copies of birth certificates and old income tax returns, etc., etc., etc. On top of this, many local agencies do not give the applicant a choice of acceptable alternative documents to verify any one

fact, but accept only a specific document or require the submission of multiple documents to verify a particular assertion, and then require the requested material within 5 days.

Once the applicant has finally surmounted all these hurdles and submitted all the requested information, aid still does not come promptly even in the simplest cases. In many states the check issuing mechanism is such that there is a built-in delay of up to two months from the time the applicant is determined eligible to the time a check is generated and received. In addition, despite the fact that federal regulations require that a determination be reached and a check issued if the applicant is eligible within 45 days, many agencies abuse this reasonable promptness period by using it as a mandatory waiting period and do not complete the processing of the application until 45 days after it has been filed, even though all the necessary information is before them well in advance of this time. This delay is compounded by the fact that, as stated above, many agencies substantially delay the formal filing of the application so that their counting of the 45 days does not even begin to run until long after the individual first sought to file. Moreover, by creating these barriers to filing they effectively conceal the extent to which they exceed the 45 day rule if measured from the true date of application, the date the individual first sought to apply.

Many of these problems result from the absence of specific federal regulations. Other problems arise from HEW's failure to enforce the existing regulations. We concentrate in this petition, however, on those problems which can, and should, be addressed by rulemaking changes, and turn to a more detailed examination of those problems.

III. PROBLEMS IN THE APPLICATIONS PROCESS

A. DIFFICULTIES OF ACCESS TO WELFARE CENTERS

In most cases several trips must be made to the welfare office in order to complete the applications process. For persons living in the more rural parts of Simpson County, Mississippi, for example, there is simply no form of public transportation available. Yet the average distance to the "local" office is 20 miles and in some parts of the county persons are required to travel 96 miles simply to get the application form. In other rural areas public transportation is very expensive and time-consuming. However the trip is made, lack of babysitter means that young children must often be brought along regardless of the weather. Applicants who are working may have to miss work, and therefore income, be-

cause of the length of the trip to the welfare office.

As incredible as it might seem to persons unfamiliar with the AFDC program, many would-be applicants, after making the difficult trip described above, cannot even get an application form once they get to the welfare office. Sometimes this is because lines are so long that persons never get to the receptionist who controls the application forms. For example, in New York City people begin queuing up before 6:00 a.m. to get an application form, and in Franklin County, Ohio people arrive at the centers before they open at 8:00 a.m. Applicants who arrive too late are simply turned away and told to come back and try again. No matter what staffing problems a center might have, petitioners contend that there is no justification for not making application forms readily available.

In other instances applicants are told that the first step in the process is an applications interview which is scheduled for some later date. In places like Simpson County, Mississippi, application forms are not provided until the interview and there is a three to four week delay between the time the individual first seeks to apply and the holding of the interview. Not providing application forms prior to the interview delays the filing of the application and prevents the applicant from knowing what types of supporting verification may be needed.

Even if the applicant is able to obtain the form prior to the interview, many offices, such as those in Franklin County, Ohio, refuse to accept the application until the intake interview is held and rarely are such interviews conducted on the day the person first seeks to apply. This problem is further compounded by the practice of turning away the applicant who shows up for a scheduled interview without having completed the form or without bringing in all the supporting verification. Such a practice enables the agency to claim that delay in processing the application is attributable to the applicant when it is the agency itself that has caused the delay. Furthermore, it effectively bars the applicant from getting any assistance from the agency in completing the form or obtaining verification.

A further problem with the intake interview exists in some places, such as Houston, in that applicants frequently receive little or no advance notice that such an interview has been scheduled. In such cases failure to appear for this interview is then used as a basis for denying the claim and the applicant must either appeal or begin all over again. Even if the applicant calls in advance to say that he/she will not be able to keep the appointment, a letter

of denial is often received because the person at the welfare office who took the call failed to record it. Regardless of whether or not the claim is actually denied solely because the applicant was unable to appear for a scheduled interview, the mere fact that the agency requires such an interview before it will accept the application form means that there will be an additional delay in the process until the interview can be rescheduled.

B. PERSONS ARE DENIED BENEFITS WITHOUT EVEN BEING ALLOWED TO FILE AN APPLICATION

It is common practice for agency staff to deny persons an opportunity to file an application, or to discourage them from applying, on the basis of limited information provided by the applicant. This practice, sometimes called "prescreening," is complicated by the fact that the administration of welfare at the local level has long been prone to rule by "oral tradition" with staff making preliminary determinations based on misinformation or a misunderstanding of the eligibility requirements. Thus for example, a 20 year old woman in New York City was forced to feed, clothe, house, and care for herself and her infant daughter for several months on earnings of \$170 a month after being told by a receptionist that she and her daughter were ineligible for aid because she was under 21. Other applicants are erroneously turned away because they are enrolled in a four year college program or their rent exceeds the shelter allowance. In Franklin County, Ohio prescreeners who are untrained in the complexities of doing proper budget computations frequently tell employed applicants that they are ineligible and should not bother filing an application form based solely on a comparison between their gross income and the state's payment standard.

These problems are compounded by the lack of supervision and monitoring within most offices which results in many workers making independent judgments as to how to proceed dictated solely by personal perceptions of "proper" standards of morality or behavior.

If a person is barred or discouraged from applying as the result of a "prescreening" process, it is likely that erroneous actions will never be corrected. The individual is often given no written information about the program and therefore cannot determine independently whether to challenge the action. Furthermore there is no written record at the agency or in the person's hands describing the basis for the negative decision, so no guidance can be obtained from social or legal services agencies or client organizations. The person is not apprised of

appeal rights that would follow a formal denial. The person loses a right to retroactive benefits if formal application is later made, or if the person later inquires as to why no action was taken on what the person thought was an application.

C. APPLICATION FORMS DETER OR DELAY FILING OF APPLICATIONS

Welfare application forms have been growing in length and complexity in recent years, with the result that many eligible persons are deterred from applying, or are forced to spend a long time completing the form, and thereby lose desperately needed benefits. Present application forms tend to be well in excess of ten pages, so that agencies in effect require the full establishment of eligibility before they will begin to work on the case. Furthermore, application forms are not written in a style easily comprehended by anyone unfamiliar with welfare terminology or procedures, let alone by an applicant with a limited education. The problems confronting non-English speaking applicants are of course even greater, since forms are frequently available only in English. For example, the application form in Oakland County, Michigan is twelve pages long and is provided only in English even though the Latin Affairs Office in the county translated the form into Spanish so that the welfare department could provide the translated form to the sizable Spanish speaking community that resides in one section of the county.

Despite the fact that application forms are too complex and confusing for many applicants to complete, welfare department staff often will not assist persons who cannot fill them out alone. The cruelty of such refusal to help surmount barriers created by the agency itself was revealed dramatically in a case in Vermont in which a retarded applicant with an IQ of 59 was denied AFDC benefits as an incapacitated caretaker because he could not complete the social report that was a required part of the application form. In fact in petitioners' experience it appears common practice among welfare workers to refer persons asking for assistance in completing the forms to welfare rights or legal services offices rather than provide such help themselves.

D. DOCUMENTATION AND VERIFICATION REQUIREMENTS ARE SEVERELY ABUSED

Current verification requirements and procedures go far beyond the needs of the program. Many needy eligible applicants feel compelled to forego benefits rather than subject their families to the indignity of documenting every fact about themselves and enduring the invasion of privacy

and possible harms that result from being identified to neighbors, school personnel, landlords, employers, and merchants as applicants for public assistance.

For those who do persist with their claim substantial hardships are imposed. Limited resources must be diverted to obtaining document on top of document. Landlords, school officials, employers, etc. must be approached to fill out special forms which must be submitted to the welfare department. This can not only be embarrassing but also may lead to eviction, loss of job or other reprisals, either because of prejudices against recipients or simply because the individuals do not want to be bothered with the extra paperwork involved. The welfare department or district attorney's office may also require some time to probe into the applicant's sex life. These delays lead to hunger, eviction, and other hardships, and the process itself causes as great a dehumanization of individuals as in the days of the English Poor Laws.

The first problem with the verification process is that applicants are often required to obtain documents or supply information simply not needed to determine categorical eligibility or current need. For example, many applicants are found ineligible because they cannot document their "past maintenance," that is, the means by which they kept alive before they applied for public assistance, even though they do not seek benefits for that period of time. Another example of this problem involves the unnecessary questions applicants in some parts of the county are being required to answer about their sexual history in connection with the child support enforcement program.

The second problem is that applicants throughout the county are frequently required to submit proofs which duplicate other information or documents already provided. Thus, it is commonplace for applicants to be required to resubmit documents which had previously been provided because mismanaged local welfare agencies frequently misplace documents and require applicants to obtain additional copies or refuse to get documents from previous case records. In Oakland County, Michigan, the welfare department will not accept any verification which had previously been submitted more than 30 days ago. Thus for example, a landlord's statement which had been submitted in March would not be considered valid if the application was being considered in May and the applicant would therefore have to obtain a second statement from the landlord.

In other instances agencies request several different documents to verify

the same point. For example, an applicant in Oakland County, Michigan, who did not have a driver's license was required to purchase a photo ID from another county agency to verify name and address. As the proofs used to get the ID were the same documents he had provided the welfare agency, the ID itself did not serve as meaningful additional verification but did serve to delay the processing of the case and in addition cost the applicant \$2.

Third, applications are frequently delayed or denied because applicants have been unable to obtain a specific document. Following are just a few of the innumerable illustrations of this problem petitioners can provide, illustrations which are typical of problems throughout the country:

—In New York City a woman's application for aid for herself and her child was denied because she was unable to supply the social security number of the person she named as the absent father of the child.

—In Houston, Texas, denials frequently occur when the caretaker relative of the child is someone other than the child's parent or maternal grandparent because additional birth certificates clearly establishing relationship must be obtained.

—In Simpson County, Mississippi, applications are simply denied if the applicant cannot produce such items as a marriage license or birth certificates for all family members. No assistance is provided in obtaining or paying for such documents. In addition, any applicant claiming incapacity is given \$15.00 and told to obtain a complete medical workup. If the applicant cannot afford to pay the additional cost involved, the case is denied.

—An applicant who had recently moved to Michigan was asked to obtain a number of documents including copies of birth certificates from his former state. Since there was no way he could obtain the requested verifications within the time limits imposed by the local department, the welfare worker suggested that he withdraw his application and reapply after the documents had been obtained. When he subsequently reapplied, the worker attempted to use the fact that the first application had been withdrawn as evidence that he must have been trying to conceal something.

A fourth problem is that some agencies impose restrictive time limits, often 5 or 10 days, for the submission of documentation and deny the case if the document is not received within this time. For example, a recent sampling conducted by New York City's Human Resources Administration of 160 applications that had been rejected in January, 1978, showed that 51 percent of the denials had been incorrect. According to the report, 77 per-

cent of these erroneous denials were based on lack of documentation rather than evidence of ineligibility. The report indicated that a final determination should have simply been deferred pending receipt of verification. See *New York Times*, p. B3, 4/19/78. In Pontiac, Michigan, an applicant had to file three separate applications within a 5 week period because the first two times the mortgage company failed to send in the shelter form within the 5 day period allotted by the local welfare department.

A fifth problem is that applicants are made to return to the welfare office repeatedly because they are not told at one time about all the types of information that are required with respect to each eligibility condition that remains to be met. Although in many areas applicants are given a list of the documents they must supply, once they bring these in they are then advised that there are additional documents that must be obtained. This practice can drag on for weeks causing the applicant repeated trips to the welfare office and unnecessarily delaying the processing of the application. Some applicants, such as one in Oakland County, Michigan, have to abandon their applications because they have to take too much time off work as a result of this practice.

One final problem in this area is that local agency staff, particularly in rural areas, continue to make home visits outside of regular working hours or simply tell applicants that a home visit will be made, but no specific time is given. For example, in Houston, Texas, and Simpson County, Mississippi, home visits are completely unannounced and the application may be denied if no one is at home when the worker arrives. In Oakland County, Michigan, applicants are advised of the date of the home visit but are given no specific time of day. Therefore employed applicants or applicants with other obligations must take the whole day off to assure that they are at home when the actual visit is made.

The full horrors of the verification requirements are demonstrated in the following two examples from Oakland County, Michigan:

1. Mr. X, who receives social security disability benefits because of a defective heart valve, applied the last week in February for AFDC benefits when his son came to live with him. He had no means of transportation and was under doctor's instructions not to exert himself. At the intake interview Mr. X furnished some of the required verification and was told he had five days to submit: a) a title to an old disabled car presently sitting at a gas station waiting for repairs to be made when Mr. X could afford them; b) a "shelter form" filled out by his absent-

tee landlord; c) a letter from his wife stating that they were no longer living together; d) verification that his son was living with him; e) a medical report completed by his doctor; f) a letter from the Social Security office stating the amount of social security his child was receiving; g) a note from the child's mother that she was getting the child's social security check and indicating the amount of the check. In addition, he was told to report to the State Employment Office to register for work.

Mr. X could not complete these tasks in one week, and therefore, has had to file two more applications since then. His social security check was recently stolen. When he was about to have his heat turned off, he asked the man in whose name the utilities were registered to come into the welfare office to talk to the worker on three separate occasions, but each time the worker was "unavailable" to see them. As of the end of April no favorable decision had been made and Mr. X had been hospitalized after attempting to take his own life in desperation.

2. Ms. Z had been receiving AFDC benefits in 1977, but they were terminated in December for failure to provide November pay stubs. She took off time from work to apply on January 6, 1978, and then took off more time for an intake interview on January 11 at which time she provided requested verification. She was told she would have to provide further verification by January 18. She took time off from work again on January 13 for a home visit, and provided additional verification at that time. She was not able to get the bank to issue statements concerning closed checking and saving accounts by January 18 however.

Ms. Z took time off work on January 31 to reapply and on February 6 for an intake interview. She still had to provide further verification, including the statements from the bank. On February 13 she was told all necessary information had been provided.

On February 17, however, she received a letter telling her that the bank had not submitted sufficient information, and that she must submit documentation by February 22 concerning a house she had owned a year and a half ago when she was receiving AFDC. She was not able to provide the bank form until February 23, and was told her application would therefore be denied. The worker also refused to review the old AFDC case file for the pertinent information about the house.

In early March Ms. Z requested a fair hearing on the denial of her application. The hearing was not held until April 4 and a decision was rendered at the end of April. The hearing officer determined that her case should not

have been terminated in the first place and that Ms. Z was entitled to retroactive benefits back to December. As of this writing, however, Ms. Z has not yet received any assistance.

As these examples make clear, verification is being used to punish families who have the misfortune of being poor. One would never know Congress established the AFDC program "for the purpose of encouraging the care of dependent children in their own homes" and to "help maintain and strengthen family life."

E. DETERMINATIONS OF ELIGIBILITY ARE SERIOUSLY DELAYED AND ARE INADEQUATELY EXPLAINED

Despite the fact that the AFDC program was created to assist dependent children in acute need, and the Act requires that aid be furnished "with reasonable promptness," it simply takes too long before aid is provided. As we have discussed in some of the preceding sections, various local practices may result in a delay of several weeks before those agencies believe the formal eligibility determination process has begun. The agencies then believe they have 45 days under federal regulations to make determinations. A persistent problem throughout the country is that rather than use the 45 day period as an outer time limit, many states are either using it as a waiting period and not issuing checks to eligible applicants until the full 45 days have elapsed, or are totally disregarding the time limit altogether.

For example, in New York City an applicant filed an application for AFDC on behalf of herself and two children on December 6, 1977, and supplied all verification requested at that time. Although she was repeatedly reassured that no additional information was required and that her case would be accepted, as of March 24 she had not received either a notice or any assistance for her family. As a result of this delay the applicant was three months behind in her rent, owed \$150 to a grocer who had been extending credit to the family up until mid-February, was forced to keep her older son out of school because she had no money to buy winter clothing, and was unable to get medical attention for her younger son who had a serious ear infection.

In Franklin County, Ohio, an applicant who had recently moved from out of state filed an application for assistance and supplied all the documents that were requested on February 20, 1978. When she went back to the welfare department in late March to inquire about her application, she was informed that processing was being delayed because she had to obtain a letter from her former welfare department stating that they had ceased pro-

viding benefits as of February 15. She supplied this document the first week in April and on April 24 returned to the welfare office to find out why she still had not heard from them. She was told that her application had been approved, although she received no official notice of this fact, but that it would take from 5 to 6 weeks before she would receive any assistance.

In fact HEW's national statistics show that as of December 31, 1976, the last month for which published statistics are available, only 71% of all AFDC applications had been pending less than 45 days, and that 15%, or almost 19,000 of the 125,000 applications had been pending more than 60 days. NCSS Report A-12, Applications and Case Dispositions for Public Assistance, October-December 1976, table 2A, p. 9. More recent data shows that in Ohio, 31% of applications were pending over 45 days and 22% over 60 (as of 1-31-77); Michigan, 36% were over 45 days and 27% over 60 (as of 12-31-77); and in Mississippi, 17% were pending over 60 days (as of 12-31-78).

In Oakland County, Michigan, and New York City, the welfare departments have reduced their total number of delayed cases by simply denying the application even when there is no reason to question eligibility in cases in which the applicant has been unable to obtain the requested verification. The applicants who are so denied must either wait for the appeals process to work its course or reapply and begin the whole process once again.

Another problem with determinations are the notices that are sent to applicants once a decision has been made. Large numbers of applicants receive no notice at all or receive notices of denial that neither specify the reasons nor cite to the applicable state and federal regulations. Instead applicants often receive a notice which simply contains a cryptic statement such as "Your application has been denied because you are over-income" with no explanation of what this determination means or how it was arrived at. In such cases applicants cannot make any reasonable decision on whether to appeal the denial because they not only do not know whether their income was properly counted but furthermore do not even know what the income limitation is. In Oakland County, Michigan, applicants receive something called a "negative action letter" informing them that their application will be denied if certain specified documents are not submitted within 5 working days from the mailing of the letter. If the applicant is unable to supply any one of documents noted within the 5 days, the claim is denied with no further notice

to the applicant as to the basis of such denial.

Notices of award are equally deficient, often only informing the applicant that beginning on a specified date a regularly recurring grant of a specified amount will be paid. No information is provided on how the budget was computed and the grant amount arrived at. This makes it impossible for the applicant to determine whether the amount is correct.

Finally, one of the greatest horrors for eligible needy families is the wait between the time that eligibility has been formally determined and the first check is actually received. Illegal delays of two weeks to several months from the time of determination of eligibility to issuance of payment appear to be commonplace throughout the country. Clearly there is no justification in any case for any delay of more than the day or two necessary to actually process payment. In addition, of course, the delays between determination and issuance of payment often come on top of delays in reaching the determination itself so that the total time from application to payment is weeks or months longer than the 45 days allowed.

IV. ACTION TO BE TAKEN BY HEW

HEW must develop new regulations, models and guidelines to remove the barriers preventing eligible needy families from receiving AFDC benefits. We submit the following list for agency consideration, and urge the agency to discuss these approaches and any others with a wide variety of people, most particularly the poor who would be affected by these policies. We recognize that some of these proposals will have greater impact on the problems than others, and that some will require greater efforts by agency staff than others. We believe all would improve the administration of the program, however. In addition, we underscore two items below on which immediate action should be taken for reasons which will be noted.

A. TO ADDRESS ACCESS PROBLEMS

1. Require that an oral request for assistance in person or by telephone, or a written request not on the agency's application form, be considered an application as of the date of the initial contact and that a written application form be provided or mailed immediately upon receipt of such oral or written application, as is now required in the SSI program. SSA Claims Manual § 12101 (4/3/78).

2. Require that agencies accept and begin processing application forms whenever submitted.

3. Require that local offices be decentralized, or that part-time contact stations be established, whenever cer-

tain standards concerning the distance and the availability of public transportation have been exceeded.

4. Impose minimum staffing standards.

B. TO ADDRESS "PRESCREENING" PROBLEMS

1. Require that informational pamphlets, concerning the right to apply and eligibility factors, and an application form be provided whenever an individual expresses an interest in financial assistance.

2. Require signs in each office describing the types of informational pamphlets, manuals and other policy issuances which are available and the right of all persons to file an application.

C. TO ADDRESS PROBLEMS CREATED BY THE APPLICATION FORM

1. Require that the application form first provided to applicants be no more than two pages in length.

2. Require that any office which serves a community in which at least 10% of the population is non-English speaking have application forms available in the language(s) spoken by the community.

3. Require that staff be available to assist applicants who want help in completing the application form. The application form itself should indicate that help is available, and should include a question as to whether help which was needed was provided.

D. TO ADDRESS VERIFICATION PROBLEMS

1. Require that the applicant be the primary source of information and that independent verification be sought only when it is reasonably necessary to ensure the legality of expenditures under the program. No contacts outside the agency should be made without the consent of the applicant. States should be precluded from denying aid if consent is refused unless such contact is needed because information available to the agency shows a reason to question eligibility.

2. Require that states develop standards and methods to determine eligibility which do not harass applicants or violate their privacy or personal dignity.

3. Provide that workers explain to applicants what information is needed and why, that they aid the applicant in obtaining the requested information, and that the agency pay the costs of obtaining any document or information which it requests.

4. Prohibit states from denying an application on the grounds that a specific kind of evidence or document or multiple evidence or documents could not be produced when a satisfactory source of information was available, or that documents were not produced within a specific period of time.

E. TO ADDRESS PROBLEMS OF PROCESSING DELAYS

1. Require states to pay aid from the first day of the month in which the application is filed, not the 30th day after application. This would reduce the financial incentive to the state to delay a determination, and would provide the family with the funds it would have received had eligibility been determined promptly. The Secretary responded favorably to this recommendation in a November 1, 1977 letter to the Center on Social Welfare Policy and Law, and promised action by December 31, 1977. No action has yet been announced.

2. Reestablish a 30 day standard of reasonable promptness.

3. Establish time standards for determining eligibility for various percentages of all applications (such as 50% of all applications in 10 days, 75% of all applications in 20 days, etc.) to assure that all applications are processed promptly.

4. Mandate that delay of a determination on an application beyond the permissible time limit be considered an erroneous denial for Quality Control and fiscal incentive purposes unless the agency demonstrates that the delay could be justified under federal regulation.

5. Require states to obtain detailed monthly reports from all local offices (on the number of applications pending, the time applications have been pending, and the length of time taken for a determination in each case), to provide such data to HEW on a quarterly basis, and to implement corrective plans when federal standards are exceeded.

6. Require that a notice be sent to applicants 10 days before the time limit for determination of applications reminding the applicant when a decision will be overdue and of the right to a hearing if a decision is not reached promptly.

7. Provide that notices of award, and notices of denial based on a determination that ineligibility results from financial factors, contain a budget computation and sufficient information for an applicant to decide whether the grant amount was properly computed.

8. Require states to issue the first check on the date the application is acted upon favorably, and to notify recipients the day the check is issued, if possible, so that they may pick it up at the local welfare office if they wish.

F. TO ADDRESS ALL OF THE PROBLEMS NOTED HEREIN

1. Require standards for training of new staff and for assuring competence of all existing staff having any responsibility for intake, advice as to eligibility, or eligibility determinations. Such training and competence should in-

involve substantive knowledge of the program and methods of relating to needy persons in a responsible and dignified manner.

2. Require states to develop a system for holding individual employees accountable for wrongful denial of benefits, for failure to provide assistance in completing application forms, and for noncompliance with other requirements protecting applicants.

3. Require states to maintain all policy material governing eligibility determinations and the processing of applications in a well-indexed manual accessible to agency staff and the public.

4. Require states to notify all persons erroneously denied aid whose cases have been identified through Quality Control procedures and otherwise that they may wish to reapply or press their original application.

G. IN ADDITION TO CONSIDERING REGULATIONS WITH REGARD TO THE MATTERS LISTED ABOVE, HEW SHOULD

1. Develop a model application form of no more than 2 pages to be adapted by the individual states.

2. Develop models and require states to prepare informational pamphlets on (1) categorical eligibility (including AFDC foster care, AFDC for incapacitated parents, AFDC and step-parents, and AFDC-UP), (2) rights and responsibilities of applicants and recipients (including fair hearing rights), (3) financial eligibility (including a budget worksheet so applicants can determine themselves whether they might be eligible) and (4) verification requirements (including alternative types of acceptable proofs).

3. Develop uniform models for state manuals to enable agency staff to make speedier and more accurate eligibility determinations and to facilitate review of such material to assure that the state's actual program is in compliance with federal requirements.

4. Develop federal guidelines suggesting what types of information may need to be obtained, which of the information may need to be verified, the types of verification which should be considered acceptable, and proper and reasonable alternatives when a preferred type of information is not reasonably available or cannot be obtained promptly.

5. Develop a model notice packet which would include notices providing all information necessary to determine the correctness of a decision.

6. Provide technical assistance to states to expedite the processing of applications.

CONCLUSION

The need for prompt HEW rulemaking concerning the AFDC applications process is clear beyond question. The

Secretary should therefore direct that the rulemaking process proceed as rapidly as possible so that future applicants are not subjected to the harms described in this petition. Petitioners are prepared to work together with the agency to develop the most effective regulations, guidelines and models, and request a speedy response to this petition.

Respectfully submitted,

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**COMMUNITY SERVICES
ADMINISTRATION**

[45 CFR PART 1061]

[CSA Instruction 6168-2c]

SUMMER YOUTH RECREATION PROGRAMS

**Purposes and Conditions of Program; Funding,
Financial Policies and Application Procedures**

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: The Community Services Administration is filing a proposed rule describing the FY 1979 Summer Youth Recreation Program to be funded under Section 222(a)(6) of the Economic Opportunity Act of 1964, as amended. This proposed rule remains basically the same as the regulation that governed the FY 1978 program. This proposed rule discusses the purposes and conditions of the program, categories of projects eligible for funding, financial policies, and application procedures.

DATE: CSA welcomes comments on this rule. Comments received prior to April 18, 1979, will be taken into consideration in writing the final rule.

ADDRESS: Please send all comments to: Nolan Lewis Community Services Administration, Office of Program Development, 1200 19th St., N.W., Room 310, Washington, D.C. 20506.

For any specific program or grant application question contact the appropriate CSA Regional Office.

**FOR FURTHER INFORMATION
CONTACT:**

Nolan Lewis, Community Services Administration, Office of Program Development, 1200 19th St., N.W., Room 310, Washington, D.C. 20506.

(202) 254-5276, Teletypewriter No. (202)-6218.

SUPPLEMENTARY INFORMATION:

The proposed Summer Youth Recreation Program regulations remain basically the same as the program regulation governing the FY 1978 Program. However, CSA wants to call attention to the basic area of change based on legislative requirements. Section 222(a)(6) of the Economic Opportunity Act of 1964, as amended, established Community Action Agencies as the eligible applicants for FY 1979 funding. These regulations have been revised to reflect this change. CSA has also imposed certain policy and procedural changes from the previous year which will improve the overall management and operation of the program. In summarizing these changes, the FY 1979 proposed rule will place a stronger emphasis on mobilization of resources, coordination with other related state and local efforts and innovative educational activities as essential and integral elements of all Summer Youth Recreation Programs.

The non-competitive selection process is described in § 1061.20-6. While the proposed revisions in the Summer Youth Recreation Program are not considered significant, we are reprinting the entire rule for public review and we welcome comments from all interested parties. Due to the continuing adverse economic conditions in most communities, the non-Federal share requirement is waived for all projects funded under Section 222(a)(6) for FY 1979.

AUTHORITY: The provisions of this subpart are issued under Section 602, 78 Stat. 530; 42 U.S.C. 2942.

GRACIELA (GRACE) OLIVAREZ,
Director.

45 CFR 1061 is amended by revising the following Subpart to read as follows:

Subpart—Summer Youth Recreation Programs

- Sec.
- 1061.20-1 Applicability.
 - 1061.20-2 Definitions.
 - 1061.20-3 Summer Youth Recreation Program—description and components.
 - 1061.20-4 Eligible sponsors/alternates.
 - 1061.20-5 Eligible participants.
 - 1061.20-6 Funding.
 - 1061.20-7 Application process.
 - 1061.20-8 Expenditure of funds.
 - 1061.20-9 Coordination with other programs.
 - 1061.20-10 General requirements.
- Appendix A CSA Regional Offices.
Appendix B State School Lunch Directors.

AUTHORITY:—Sec. 602, 78 Stat. 530; 42 U.S.C. 2942

Subpart—Summer Youth Recreation Programs

§ 1061.20-1 Applicability.

This subpart applies to grantees funded under Section 222(a)(6) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.20-2 Definitions.

For purposes of this subpart the following definitions will apply:

(a) "Act" shall mean the Economic Opportunity Act of 1964, as amended.

(b) "Allocation" shall mean the distribution of funds among Community Action Agencies, and, where applicable, other public or private non-profit agencies.

(c) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(d) "CETA Act" shall mean the Comprehensive Employment and Training Act of 1978 (Pub. L. 95-524).

(e) "Chief Elected Official" and "Chief Executive Officer" shall include their designees.

(f) "Community Action Agency" shall mean a political jurisdiction, public agency, or private non-profit agency which has the power and authority and will perform the functions set forth in Section 212 of the Act and is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently recognized as a community action agency by the Director.

(g) "CSA Regional Director" shall mean the ten Regional Directors of the Community Services Administration in specified geographical areas of the country. (See Appendix A for the appropriate CSA Regional Office serving your area).

(h) "Director" shall mean the Director of the Community Services Administration.

(i) "Economically Disadvantaged" shall mean a person who is a member of a family as defined under CSA income poverty guidelines.

(j) "Summer Youth Program" shall mean the Summer Employment Program for Economically Disadvantaged Youth funded under Title IV Section 481(a) of the Comprehensive Employment and Training Act of 1978 and administered by the U.S. Department of Labor.

§ 1061.20-3 Summer Youth Recreation Program—description and components

(a) Description. (1) The Summer Youth Recreation Program is designed to provide recreational opportunities for low-income children during the summer months. The programs will be conducted in conjunction with the Summer Youth Program administered

by the U.S. Department of Labor. Summer Youth enrollees should be utilized to the maximum extent possible in the conduct of this program.

(2) The program shall begin as soon as possible after the spring closing of school and shall not continue beyond the end of the Federal fiscal year (September 30).

(3) To the maximum extent possible, Summer Youth Recreation Program sites shall be located directly in low-income communities or areas to ensure that disadvantaged youth are the beneficiaries of the programs. Activities shall be conducted in as many areas of the sponsor's jurisdiction and designed to serve as many low-income children as possible within the constraints of effective program management and support.

(b) Components. (1) Summer Youth Recreation Programs will consist of the following components:

(i) Recreation support programs will provide recreation opportunities such as playground activities, organized sports and games, arts and crafts, informational tours, cultural field trips, instruction in the creative arts and special events.

(ii) Transportation support programs will provide transportation services to such cultural, recreational, or educational activities.

§ 1061.20-4 Eligible sponsors/alternates.

(a) Eligible Agencies. Agencies eligible to receive summer recreation funds shall be Community Action Agencies or other public or private non-profit agencies where no Community Action Agency exists or has been designated to administer a program.

(b) Alternative Sponsors. The CSA Regional Director may provide for the funding of an alternative sponsor if a sponsor, for any reason, is unable to establish or maintain an acceptable Summer Youth Recreation Program.

(c) Delegate Agencies/Subgrants. A Summer Youth Recreation sponsor may enter into contracts or subgrants under the terms set forth in and through use of OEO Form 280, *Agreement for Delegation of Activities*.

§ 1061.20-5 Eligible participants.

Participants in a Summer Youth Recreation Program shall be economically disadvantaged youth too young to obtain employment. The main target group for the Summer Youth Recreation Program shall be disadvantaged youth between the ages of eight and thirteen.

§ 1061.20-6 Funding.

(a) Allocation of Funds. The allocation formula for each state will be based upon the relative number of poor residing within that state as compared to the number of poor in the

nation based upon the 1970 census. No state is automatically entitled to receive its allotment. The allotments for states are target allotments to which they are entitled if applications of sufficient quality are submitted to justify funding.

(b) Target planning figures will be provided each Community Action Agency by the appropriate CSA Regional Office based upon the relative number of poor residing within that CAA's target area. CAAs will make applications for funding in the amount of that target planning figure in accordance with the application procedures established herein. CSA Regional Directors shall have discretionary authority to provide funds to serve the recreational needs of economically disadvantaged children in areas not covered by a CAA where there is a clearly demonstrated need for such services and a viable delivery system exists to deliver the services. \$6,000 will be the minimum target planning figure a potential SYRP grantee will receive. In exceptional circumstances, where a grantee submits a satisfactory SYRP grant application but funding constraints preclude the grantee being funded at the \$6,000 minimum level, the Regional Director may fund the grantee for a lesser amount after thoroughly reviewing the situation to assure that the overall resources to be mobilized and the coordination with other agencies to be effected will result in a viable SYRP program being carried out.

Additional factors which will be taken into consideration in making funding decisions will be: grantees ability to operate a high quality program based upon past overall grantee performance; evidence in the grant application of mobilization of non-CSA resources; coordination with other appropriate state and local organizations; and, the number of poor children proposed to be served.

(c) Non-Federal Share; Waiver of. Non-Federal share required by Section 225(c) is waived for all programs funded under Section 222(a)(6), Summer Youth Recreation Programs, and does not require a request for waiver from applicants for grants.

§ 1061.20-7 Application process.

(a) Forms/Documentation Required. The basic forms to be used in applying for a Summer Youth Recreation Program are as follows:

(1) CSA Form 301, *Summary of Grant Application*

(2) OEO Form 325, *Budget Summary*

(3) OEO Form 325a, *Budget Support*

(4) OEO Form 394, *Checkpoint Procedure for Coordination*

(5) CSA Form 419, *Summary of Work Programs and Budget*

(6) SF 424, Federal Assistance (Sections I and II completed)

(1) When Delegating Programs.

(A) CAP Form 11, Assurance of Compliance with Civil Rights Act

(B) Form 85, Administering Agency Funding Estimate

(C) CAP Form 87, Delegate Agency Basic Information

(D) OEO Form 280, Agreement for Delegation of Activities

These forms will be made available to grantees by the appropriate CSA Regional Offices.

(ii) All eligible applicants should submit the original and two (2) copies of all required forms and documents to the appropriate CSA Regional Director.

(b) Deadline for Submission of Applications. Summer Youth Recreation Program grant applications shall be submitted to CSA Regional Offices no later than _____.

(c) Clearinghouse Notification and Review. All eligible applicants must follow the Project Notification and Review System procedures as outlined in 45 CFR 10.67.10 (CSA Instruction 6710-3a, Change 2).

NOTE: Applicants are reminded that it is in their best interest to file their notice of intent with Clearinghouses immediately upon determination to apply for funds from CSA under this program, as a two (2) month period may be necessary for the Clearinghouses' review.

(d) Monitoring and Evaluation. The CSA Regional Offices will be responsible for monitoring and evaluation of the Summer Youth Recreation Program. In addition, CSA Headquarters may undertake on-site evaluations of selected projects.

§ 1061.20-8 Expenditure of funds.

(a) Allowable Costs. (1) Administration, including salaries, wages and fringe benefits of administrative staff (but not program staff); consumable office supplies; rent and utilities; telephone and postage; travel of administrative staff and audit costs. Funds in this category are subject to the administrative cost limitation of 15% as defined in OEO Instruction 6807-1, Limitation on CAA Administrative Costs.

(2) Recreation services including but not limited to: purchase of recreation equipment¹ and supplies up to \$200 per unit cost to be used in support of the program; rental of recreational equipment and supplies to be used in support of the program; admission to special events; field trip expenses; salaries; wages, fringe benefits, and orientation of program staff, such as, art instructors and playground supervisors; transportation for participants and program staff; lunches or food pro-

vided as an integral part of a recreation activity; recreation clothing and insurance. The standards to be used for the procurement of supplies, equipment, and other material and services with federal grant funds are described in reference (g).

(3) Charges above operating costs for the use of grantee owned facilities will not be made to the Summer Youth Recreation Program except with the written authorization of the appropriate CSA Regional Director.

(4) Transportation services, including but not limited to: bus tokens, and rental of buses and vans.

(b) Non-Allowable Costs. (1) Summer Youth Recreation program funds shall not be expended on office equipment, in-place installations, capital improvements, to compensate participants in the program or to purchase transportation vehicles or equipment such as cars, vans, or buses.

(2) Summer Youth Recreation Program funds shall not be used to finance any other program activities and services not authorized under the Summer Youth Recreation Program such as, but not limited to, work experience, on-the-job training or public service employment activities.

(3) Summer Youth Recreation Program funds shall not be used to finance trips outside a 100-mile radius of the sponsor's jurisdiction unless the trip has received the specific written approval of the CSA Regional Director or his designee.

§ 1061.20-9 Coordination with other programs.

(a) The success of the Summer Youth Recreation Program depends to a great degree upon coordination with other programs and upon the mobilization of other public and private resources. A particularly key element in successful recreational programs is the utilization of the Summer Youth Program (summer employment for disadvantaged youth between the ages of 14 and 21). This program has been used since the inception of the Summer Youth Recreation Program to provide program personnel who serve as playground supervisors, coaches, field trip monitors, etc. in the Summer Youth Recreation Programs.

(b) All grantees should utilize the Summer Food Service Program for Children as a part of the Summer Youth Recreation Program. The Summer Food Service Program provides meals for low-income children from needy areas and is administered by the Department of Agriculture through state agencies or the Food and Nutrition Service Regional Offices (see Appendix B for listing of these organizations who can assist grantees in applying for the program). Organizations planning to apply for a Summer

Youth Recreation Program grant should contact the appropriate state or regional officials as soon as possible to assure participation in the Summer Food Service Program for Children.

(c) The Summer Youth Recreation Program will be closely coordinated with related social service programs operated by other community based organizations (park and recreation departments, schools, etc.) with a view of minimizing possible duplication of effort and promoting efficiency by use of common facilities and services.

§ 1061.20-10 General requirements.

(a) Maintenance of Effort. No grantee shall, because of funds granted under Section 222(a)(6) of the Act, reduce or decrease funds already planned for summer youth recreation activities of a nature similar to those provided under the aforementioned Section.

(b) Insurance. (1) Public Grantees. Public Grantees will follow their requirements and practices.

(2) Nongovernmental Grantees. General liability insurance, including automobile liability insurance must be obtained, in amounts which assure the adequate protection of program participants and the grantee. The required minimum property damage coverage shall be \$25,000.

(c) Bonding. (1) Public grantees will follow their regular requirements and practices.

(2) Prior to the release of funds to any private grantee, CSA must receive written assurance that arrangements have been made for appropriate bonding of grantee officials in accordance with provisions set forth in 45 CFR 1050.15 (CSA Instruction 6800-3).

(d) Program Progress Report. All grantees must submit a Program Progress Report (PPR) as outlined in 45 CFR 1050.15 (CSA Instruction 6800-9) on the accomplishments of the Summer Youth Recreation Program to the appropriate CSA Regional Office no later than October 30 of the calendar year in which the program has been funded.

(e) Financial Reporting. A financial report is to be submitted by October 30 of the calendar year in which the program has been funded to the appropriate CSA Regional Office in accordance with the requirements and procedures set forth in 45 CFR 1050.70 (CSA Instruction 6800-8 and OEO Instruction 6801-1).

(f) Auditing. Audit requirements for this program are to be met by complying with OEO Instruction 6801-1 and any special conditions that are part of the grant award.

(g) Safety and Health Conditions. Participants shall not be exposed to conditions which are unsanitary or

¹Disposition of property will be in accordance with the CSA policy published in 45 CFR 1050 (CSA Instruction 6800-9).

hazardous or dangerous to their safety or health.

(h) Licensing. All transportation services under this program will be from sources properly licensed to provide carriage of the public, and which are operated in compliance with all applicable local, State and/or Federal statutes covering public transportation.

APPENDIX A

CSA REGIONAL OFFICES

Director, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Region I—States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Director, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Region II—States served: New Jersey, New York, Puerto Rico, Virgin Islands.

Director, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104, Region III—States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Director, 101 Marietta Street, N.W., Atlanta, Georgia 30303, Region IV—States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Director, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Region V—States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Director, 1200 Main Street, Dallas, Texas 75202, Region VI—States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Director, 911 Walnut Street, Kansas City, Missouri 64106, Region VII—States served: Iowa, Kansas, Missouri, Nebraska.

Director, Federal Office Building, 1961 Stout Street, Denver, Colorado 80202, Region VIII—States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Director, 450 Golden Gate Avenue, P.O. Box 36008, San Francisco, California 94102, Region IX—States served: Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories.

Director, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101, Region X—States served: Alaska, Idaho, Oregon, Washington.

APPENDIX B

STATE SCHOOL LUNCH DIRECTORS

1. Mr. T. G. Smith, Coordinator, Child Nutrition Program, State Department of Education, 410 State Office Building, Montgomery, AL 36130.

2. Mrs. E. Ruth Benigno, School Food Coordinator, State Department of Education, Pouch F. Juneau, AK 99801.

3. Mrs. Letea Tualo, Director, Food Services Program, Department of Education, Pago Pago, AS 96920.

4. Mrs. Junetta Barrett, Director, Food Nutrition Division, Department of Education, 1535 West Jefferson, Phoenix, AZ 85007.

5. Mr. Doyle Border, Coordinator, School Food Services, State Department of Education, 403 E Education Building, Little Rock, AR 72201.

6. Mrs. L. Gene White, Director, Office of Food and Nutrition Services, State Department of Education, 721 Capitol Mall, Sacramento, CA 95814.

7. Mr. Daniel G. Wisotzkey, Director, School Food and Services and Supportive Services, Colorado State Department of Education, 201 East Colfax, Room 318 State Office Building, Denver, CO 80203.

8. Mrs. Ann Tolman, Director, Child Nutrition Programs, State Department of Education, Post Office Box 2219 Room G-25, Hartford, CT 06115.

9. Mr. Robert L. John, State Supervisor of Food Services, Department of Public Instruction, John G. Townsend Building, Dover, DE 19901.

10. Mr. Joseph M. Stewart, Director, Department of Food Services, Public Schools of District of Columbia, 3535 V Street, N.E., Washington, DC 20018.

11. Mr. George A. Hockenberry, Administrator, Food and Nutrition Management, State Department of Education, Tallahassee, FL 32304.

12. Miss Josephine Martin, Administrator, School Food and Nutrition Section, State Department of Education, 156 Trinity Avenue South West, Atlanta, GA 30303.

13. Ms. Eleanor K. Smith, Associate Superintendent Food Services, Department of Education, Government of Guam, Post Office Box DE, Agaña, GU 96910.

14. Mr. Stanley W. Doucette, Director, School Food Services, State Department of Education, Post Office Box 2360, Honolulu, HI 96804.

15. Mr. Cecil F. Olsen, Director, Food Services Branch, State Department of Education, Len B. Jordan Office Building, Room 213, Boise, ID 83720.

16. Mr. Robert E. Ohlzen, Manager, School Food Services Section, Illinois Office of Education, 100 North First Street, Springfield, IL 62777.

17. Mr. John J. Harter, Director, Division of School Food and Nutrition Programs, State Department of Public Instruction, 120 West Market Street—16th Floor, Indianapolis, IN 46204.

18. Mr. Verne E. Carpenter, Director, Child Nutrition Programs Division, State Department of Public Instruction, Grimes State Office Building, Des Moines, IA 50319.

19. Mrs. Rita Hamman, Director, School Food Services, State Department of Education, Kansas State Education Building, 120 East 10th Street, Topeka, KS 66612.

20. Mr. Redwood Taylor, Director, Division of School Food Services, Bureau of Administration and Finance, State Department of Education, Capitol Plaza, 19th Floor, Frankfort, KY 40601.

21. Dr. Joseph A. Dazzio, Director, Local School System Services, State Department of Education, Post Office Box 44064, Baton Rouge, LA 70804.

22. Miss M. Gertrude Griney, Director, School Nutrition Programs, State Department of Education, Education Building, Augusta, ME 04333.

23. Mrs. Joan H. Weatherholtz, Coordinator, Food and Nutrition Section, State Department of Education, BWI Airport Post Office Box 8717, Baltimore, MD 21240.

24. Mr. John C. Stalker, Director, Bureau of Nutrition Education and School Food Services, State Department of Education, 182 Tremont Street, 10th Floor, Boston, MA 02111.

25. Mr. James L. Borough, Supervisor, Food and Nutrition Programs, School Man-

agement Services, State Department of Education, Post Office Box 30008, Lansing, MI 48909.

26. Mr. Charles L. Matthew, Director, Child Nutrition Section, State Department of Education, Capitol Square Building, Room 509, St. Paul, MN 55101.

27. Mr. John H. Walker, Assistant Director, Administration and Finance, State Department of Education, Room 604 Walter Sillers Office Building, Post Office Box 771, Jackson, MS 39205.

28. Mr. Wilbert Grannemann, Director, School Food Services, Department of Elementary and Secondary Education, Jefferson Building, Post Office Box 480, Jefferson City, MO 65101.

29. Mr. H. Brisbin Skiles, Supervisor, School Food Services, Office of Public Instruction, State Capitol, Helena, MT 59601.

30. Dr. Ray Steinert, Director, School Food Services, State Department of Education, 301 Centennial Mall South, 6th Floor, Lincoln, NE 68509.

31. Miss Eleanor Bateman, Supervisor of Food Services, State Department of Education, 400 West King Street Capitol Complex, Carson City, NV 89710.

32. Mr. Lloyd Littlefield, Director, Food and Nutrition, Division of Administration, State House Annex, Concord, NH 03301.

33. Mr. Walter F. Colender, Director, Bureau of Child Nutrition Programs, Division of Field Services, State Department of Education, 225 West State Street, Trenton, NJ 08625.

34. Mr. Harry Riser, Director, School Food Services, State Department of Education, Santa Fe, NM 87503.

35. Mr. Richard O. Reed, Chief, Bureau of School Food Management, State Department of Education, 99 Washington Avenue, 17th Floor, Room 1736, Albany, NY 12230.

36. Mr. Ralph W. Eaton, Director, State Department of Public Instruction, Post Office Box 12197, Raleigh, NC 27605.

37. Miss Roberta A. Bosch, Director, School Food Services, State Department of Public Instruction, State Capitol Building, Bismark, ND 58505.

38. Mr. Robert H. Koon, Director, Division of School Lunch, State Department of Education, 65 South Front Street Room 1009, Columbus, OH 43215.

39. Mr. Fred L. Jones, Director, School Lunch Section, State Department of Education, 2500 North Lincoln Boulevard, Oliver Hodge Memorial Education Building, Room 340, Oklahoma City, OK 73105.

40. Mr. Richard S. Miller, Coordinator, School Food and Nutrition Services, Oregon State Department of Education, 924 Lancaster Drive North East Room 212, Salem, OR 97310.

41. Mr. Warren M. Vann, Jr., Chief, Division of Food and Nutrition Services, State Department of Education, Post Office Box 911, Harrisburg, PA 17126.

42. Mr. Carlos Martinez Aviles, Director, School Lunchroom Division, Department of Education, URB Industrial Tres Monjitas, Post Office Box 759, Hato Rey, PR 00919.

43. Mr. Robert F. Kaveny, Program Business Manager, Office of School Food Services, Roger Williams Building, Hayes Street, Providence, RI 02908.

44. Mr. John L. Seurynck, Director, Office of School Food Services, State Department of Education, 305 Rutledge Building, Columbia, SC 29201.

45. Mr. Gary Rhead, Administrator, School Food Services, Department of Edu-

education and Cultural Affairs, Division of Elementary and Secondary Education, Pierre, SD 57501.

46. Mrs. Mary Louise Richardson, Director, School Food Services, State Department of Education, Cordell Hull Building Room 117, Nashville, TN 37219.

47. Mr. Charles A. Cole, Director, School Lunch Program, Texas Education Agency, 201 East 11th Street, Austin, TX 78701.

48. Mr. George A. Bussell, Food Service Officer, Department of Education, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950.

49. Mr. Cluff D. Snow, Coordinator, School Food Services, 250 East 500 South, Salt Lake City, UT 84111.

50. Miss Banba Foley, Chief, Child Nutrition Programs, State Department of Education, State Office Building, Montpelier, VT 05602.

51. Vacant, Director, School Lunch Program, Department of Education, Post Office Box 630, Charlotte Amalie, St. Thomas, VI 00801.

52. Mr. John F. Miller, Supervisor, School Food Services, State Department of Education, 8th Street Office Building, Richmond, VA 23216.

53. Miss Virginia R. Whitlatch, Director, School Food Services, Department of Public Instruction, Old Capitol Building, Olympia, WA 98504.

54. Mrs. Faith Gravenmier, Director, Child Nutrition Programs, State Department of Education, State Capitol Building, Charleston, WV 25305.

55. Mr. Edward J. Post, Director, Bureau for School Food Services, Department of Public Instruction, 126 Langdon Street, Madison, WI 53703.

56. Mr. Robert M. Skyles, Assistant Superintendent of Administrative Services, State Department of Education, Hathaway Building, Cheyenne, WY 82002.

USDA REGIONAL OFFICES

57. Mid-Atlantic Regional Office, Food and Nutrition Service USDA, One Vahlsing Center, Robbinsville, NJ 08681.

Delaware	Pennsylvania
District of Columbia	Virginia
Maryland	West Virginia
New Jersey	Virgin Islands
New York	Puerto Rico

58. Midwest Regional Office, Food and Nutrition Service USDA, 536 South Clark Street, Chicago, IL 60606.

Illinois	Minnesota
Indiana	Ohio
Michigan	Wisconsin

59. Mountain Plains Regional Office, Food and Nutrition Service USDA, 1832 Stout Street, Room 296, Denver, CO 80202.

Colorado	Nebraska
Iowa	North Dakota
Kansas	South Dakota
Missouri	Utah
Montana	Wyoming

60. New England Regional Office, Food and Nutrition Service USDA, 34 Third Avenue, Burlington, MA 01803.

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

61. Southeast Regional Office, Food and Nutrition Service USDA, 110 Spring Street, North West, Atlanta, GA 30309.

Alabama
Florida
Georgia
Kentucky

Mississippi
North Carolina
South Carolina
Tennessee

62. Southwest Regional Office, Food and Nutrition Service USDA, 1100 Commerce Street, Dallas, TX 75202.

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

63. Western Regional Office, Food and Nutrition Service USDA, 550 Kearny Street, San Francisco, CA 94108.

Alaska	Nevada
Arizona	Oregon
California	Samoa America
Guam	Trust Territory
Hawaii	Washington
Idaho	

[IFR Doc 79-8287 Filed 3-16-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-42; RM-3287]

TELEVISION BROADCAST STATIONS IN ROYSTON AND WARM SPRINGS, GA.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the reassignment of noncommercial educational television Channel *22 from Warm Springs, Georgia, to Royston, Georgia. Action was taken in response to a petition filed by the Georgia State Board of Education. The proposed facility would serve an area which is not now receiving noncommercial educational television service.

DATES: Comments must be filed on or before May 11, 1979, and reply comments on or before May 31, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Royston and Warm Springs, Georgia) BC Docket No. 79-42, RM-3287.

Adopted: March 12, 1979; released: March 15, 1979.

1. The Commission has before it a petition for rule making,¹ filed by the

¹Public notice of the petition was given on January 3, 1979, Report No. 1157.

Georgia State Board of Education ("petitioner"), requesting the reassignment of noncommercial educational television Channel *22 from Warm Springs, Georgia, to Royston, Georgia. Comments and a Petition for Expedited Consideration were filed by petitioner. No other responses were received.

2. Royston (pop. 2,428), located on the border of three counties (Franklin, pop. 12,784; Hart, pop. 15,814; and Madison, pop. 13,517),² is in northeast Georgia, approximately 45 kilometers (25 miles) northeast of Athens. There are no television assignments in Royston. Warm Springs (pop. 523), in Meriwether County (pop. 19,461), is located in west central Georgia, approximately 50 kilometers (30 miles) northeast of Columbus, Georgia, and 100 kilometers (60 miles) south of Atlanta. Channel *22 is the only television channel assigned to Warm Springs. It is unoccupied and unapplied for.

3. Petitioner states that it is an agency of the State of Georgia, which has sought to employ educational television as one of the means of providing high quality instructional programming to the State. It has applied for and constructed eight noncommercial educational television broadcast stations located throughout the State of Georgia, so as to provide service to as much of the State as possible. Petitioner states that if the channel is assigned it will apply for a permit to construct a 1,000-watt translator in Royston (or another nearby community pursuant to § 73.607(b) of the Commission's Rules), which would enable it to serve approximately 16,000 persons and seven schools that lack such service. Petitioner claims that Channel *22 is the only channel that will fit into the Royston area consistent with the Commission's spacing requirements. It points out that Warm Springs is already receiving noncommercial educational television service from Station WJSP-TV (Channel *28),³ supplemented by 1,000-watt translator Station W48AB, Columbus, Georgia.

4. In its Petition for Expedited Consideration, petitioner asserts that anticipated construction costs, including the costs of acquiring the equipment for the proposed translator, were appropriated by the Georgia State Legislature as part of its present fiscal budget for the Georgia Educational Television Network. Petitioner points out that if the funds are not committed to the construction of the translator in advance of June 1979, petitioner may lose them.

5. We believe the public interest would be served by the reassignment

²Population figures are taken from the 1970 U.S. Census.

³The station licensed to serve Columbus, Georgia, broadcasts from a site just outside of Warm Springs.

of noncommercial educational television Channel *22 from Warm Springs to Royston. As indicated, Warm Springs already receives noncommercial educational television service. Since the proposed assignment could be used to bring noncommercial educational television service to an area now unserved, the Commission believes it appropriate to consider the proposal in a rule making proceeding.

6. Accordingly, it is proposed to amend the Television Table of Assignments, Section 73.606(b) of the Commission's Rules, with respect to the cities listed below as follows:

City	Channel No.	
	Present	Proposed
Royston, Georgia		*22+
Warm Springs, Georgia	*22-	

7. The Commission's authority to institute rule making proceedings, showings required, cut off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties are invited to file comments on or before May 11, 1979, and reply comments on or before May 31, 1979.

9. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Ref-

erence Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc 79-8204 Filed 3-16-79; 8:45 am]

[6712-01-M]

[47 CFR Part 97]

[Docket No. 20282; RM-1016, etc.; FCC 79-147]

AMATEUR RADIO SERVICE

Terminating Proceeding Concerning Operator Classes, Privileges, and Requirements

AGENCY: Federal Communications Commission.

ACTION: Termination of rule making proceeding.

SUMMARY: The Commission decides to defer action on the "Communicator Class" and "dual ladder" amateur licensing. A petition for "lifetime" issuance of the Amateur Extra Class license is denied; and action is deferred on changing the procedure for measuring amateur transmitter power.

EFFECTIVE DATE: Not applicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

James E. McNally, Jr., Personal Radio Division, Private Radio Bureau, (202) 632-7175.

THIRD REPORT AND ORDER—
(PROCEEDING TERMINATED)

Adopted: March 6, 1979.

Released: March 14, 1979.

In the matter of amendment of Part 97 of the Commission's rules concerning operator classes, privileges, and requirements in the Amateur Radio Service, Docket No. 20282, RM-1016, 1363, 1454, 1456, 1516, 1521, 1526, 1535, 1568, 1572, 1602, 1615, 1629, 1633, 1656, 1724, 1793, 1805, 1841, 1920, 1947, 1976, 1991, 2030, 2043, 2053, 2149, 2150, 2162, 2166, 2216, 2219, 2256, 2284, 2449.

1. On December 16, 1974, the Commission issued a Notice of Proposed Rule Making in the above-entitled matter which was published in the FEDERAL REGISTER on December 20, 1974 (39 FR 44042). The major proposed rule changes contained in the Notice were the following:

(a) Creation of a "dual ladder" licensing structure;

(b) Creation of a "Communicator Class" license having no telegraphy privileges or examination requirement;

(c) Establishment of new power limits based on transmitter peak envelope power output;

(d) New restrictions on licenses obtained by means of volunteer-administered mail examinations;

(e) Issuance of lifetime Amateur Extra Class operator licenses; and,

(f) Modification of the frequencies and modes available to certain license classes.

2. Because of severe manpower and time restrictions brought about by the huge surge in Citizens Band Radio Service applications since 1974, we were unable to undertake the preparation of a comprehensive Report and Order addressing all of the issues raised in the Notice. We did, however, release a First Report and Order on June 15, 1976 (41 FR 25013) which amended the rules to reflect the following changes:

(a) Except in cases where the applicant was physically disabled (and where the Commission would select the volunteer examiner), volunteer-administered examinations could only be given to applicants for the Novice Class license;

(b) The Conditional Class license and the "conditional" (C) limitation on the Technician Class license were to be eliminated upon renewal. Licensees holding the Conditional Class license were to be issued a regular General Class license, and holders of the Technician (C) Class license were to be issued regular Technician Class licenses;

(c) The 175 mile distance eligibility criteria for the General (formerly Conditional) Class license was eliminated;

(d) Applicants for any class of amateur license must take Element Two;

(e) Holders of the Technician Class license were given all Novice privileges; and,

(f) The maximum permissible input power for Novices was increased to 250 watts.

3. Subsequently, on April 6, 1978, we released a Second Report and Order (43 FR 15324) which gave holders of the Technician Class license full operating privileges above 50 MHz, and which changed the term of the Novice Class license from 2 years, non-renewable to 5 years, renewable.

4. The purpose of this Third Report and Order is to dispose of the remaining unresolved matters.

5. First, we have decided to take no action at this time on the 'dual ladder' licensing structure proposed in the Notice, or on the creation of a "Communicator Class" license having no telegraphy privileges or requirements. We firmly believe in the principle, articulated in the Notice, that in any licensing system there should be a logical relationship between the qualification requirements and the operator privileges authorized at each license class level. We feel that the "Communicator Class", as proposed, was in keeping with this principle; and we do not agree with the majority filing

comments who asserted that the privileges to be conveyed by the "Communicator Class" were "out of proportion" to the qualification requirements. Nevertheless, since much time has elapsed since the issuance of the Notice (4 years), and since the Amateur Radio Service has grown about 50% in that time period (with many of the new licensees coming from the Citizens Band Radio Service), it is our belief that the comments, and perhaps even our original proposal, have become somewhat outdated. Then, too, tremendous growth has taken place in the citizens Band Radio Service (1400% in 4 years); and we would like to get the views of these newer licensees on the need or desirability of a "codeless" class of amateur license. Accordingly, we hope to revisit this matter later this year in a new rule making proceeding.

6. At this time, however, we will address the matter of lifetime issuance of the amateur Extra Class license (RM-2030). In the Notice, we proposed to adopt this request since our records indicated that very few amateurs drop out of amateur radio after they have attained the amateur Extra Class. We pointed out, however, that while section 303(L)(1) of the Communications Act of 1934, as amended, allows us to issue operator licenses for life, section 307(d) limits the term of the concomitantly issued station license to not more than 5 years. At best then, we would only be able to eliminate the need to retake the examination should the amateur neglect to renew his (or her) license.

7. In the years since the issuance of the Notice, however, we have become very sensitive to the adverse effects such "special case" consideration can have on our various personal (and amateur) radio service data processing systems. While we generally retain files containing information about expired licenses for periods in excess of 5 years after the expiration date, to maintain these files indefinitely would be a new and burdensome requirement, particularly in view of the fact that very few people would be expected to take advantage of the lifetime non-examination renewal privilege. In a separate action, we have amended §97.13 to extend the "grace period" for all classes of license from one to five years. This extension will accommodate a great variety of personal circumstances which has been the basis of requests for waiver of the "grace period"; and it is, in our opinion, an equitable alternative to a lifetime, non-examination renewal privilege. Accordingly, we have decided to take no additional action on this matter.

8. Lastly, the comments filed in response to our suggestion of establish-

ing new power limits based on transmitter peak envelope power output were, in the main, negative. There were, however, several respondents who did suggest innovative alternatives to our proposal. While we have decided to take no further action on this matter at this time, we are still of the opinion that the state of present-day amateur communications warrants the use of better procedures to determine transmitter power than the "plate voltage times current" method. We intend to revisit this matter at a later time, and we encourage amateurs, in the interim, to develop and disseminate data which could be used as a basis for a workable and state-of-the-art measurement technique.

9. Accordingly, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended: *It is ordered*, That this proceeding is terminated. Further information about this action by the Commission may be obtained by contacting Mr. James E. McNally, Personal Radio Division, FCC, 1919 M St., NW., Washington, D.C. 20554 (202-632-7175).

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-8211 Filed 3-16-79; 8:45 am]

[4910-59-M]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

[49 CFR Part 571]

[Docket No. 79-06; Notice 11]

MOTOR VEHICLE SAFETY STANDARDS

Request for Comments on Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice request comments from all interested persons concerning a petition for rulemaking recently submitted to the NHTSA by the Trailways Bus Company. Trailways seeks agency rulemaking that would limit the speed capability of commercial vehicles engaged in interstate commerce to 57 miles per hour. The petition states that a rule limiting the speed capability of these vehicles would reduce accidents, save lives and save fuel. This notice requests public views concerning the merits of the Trailways petition and sets forth specific questions for which the agency would like to obtain information. This notice is only a request for comments concerning the subject petition. Any

future rulemaking involving the substance of the petition will include further notice and opportunity to comment.

DATES: Deadline for filing applications for financial assistance: April 18, 1979. Comment closing date: August 17, 1979.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Applications for financial assistance should be submitted in writing to: Ms. Jeannette Feldman, Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0670).

FOR FURTHER INFORMATION CONTACT:

Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Trailways Bus Company has petitioned for rulemaking to require all new commercial vehicles for use in interstate commerce to be equipped with governors that would limit the speed capability of the vehicle. Trailways stated that its tests indicate substantial fuel savings are possible when a bus is driven at 55 mph rather than at higher speeds. Further, the company points out that fewer and less serious accidents occur at 55 mph than at higher speeds. Trailways has tested the use of a road speed governor and intends to install governors in its entire fleet.

The petition notes that in the past, safety-minded commercial fleets have controlled road speed by governing engines and by using a high numerical gear ratio. Today, however, the trend is to lower numerical gear ratios which give longer engine life and improved fuel economy, but at the same time allow higher road speeds. Trailways states that if a vehicle has sufficient horsepower, engine revolutions per minute can be governed in all gears to a level that controls road speed to between 55 and 60 miles per hour. If a vehicle has only a four or five-speed transmission, this can be accomplished by means of a road speed governor.

The road speed governor used by Trailways limits the speed of a bus to 57 mph and is said to be reasonably tamper-proof. The system involves an air switch in the transmission shift linkage and a special engine governor that allows higher engine speeds only in lower gears. The cost of the road speed governor used by Trailways is

approximately \$75.00, and the governor can be retrofitted.

The petitioner argues that the upper speed capability of all commercial vehicles should be 57 mph. The company chose this limit to allow enough top speed to safely pass another vehicle that is traveling below the 55 mph national speed limit on a two lane road. An analysis of passing performance by Trailways was enclosed with its petition and has been placed in the NHTSA Docket Section (Docket No. 79-06; Notice 1).

The NHTSA hereby invites all interested persons to submit comments and information concerning the merits of initiating rulemaking to limit the speed capability of commercial vehicles. In order to order to obtain detailed information concerning all aspects of the Trailways petition, the NHTSA is especially interested in obtaining information concerning the following questions:

1. If the maximum speed capability of commercial vehicles is limited, what classes of vehicles should be included and why?

2. What safety benefits could be expected to derive from a rule limiting the speed capability of commercial vehicles? Could the use of road speed governors adversely affect the safe operation of commercial vehicles?

3. What benefits in fuel economy could be expected to derive from a rule limiting the speed capability of commercial vehicles?

4. What types of speed governors are the most effective and efficient for limiting the speed capability of vehicles? Discuss the costs of these governors if installed on new commercial vehicles. Discuss the costs of the governors if installed as retrofit equipment.

5. To what degree can each of the various types of speed governors be made "tamper-proof?"

6. If the maximum speed capability of commercial vehicles is limited, what should the upper limit be and why? Explain why 57 mph is or is not an appropriate limit.

7. Would a rule limiting speed capability be generally favored by commercial fleet owners? By commercial drivers?

8. How many commercial fleets currently use speed governors on their vehicles? What has been the experience of these companies with the governors in terms of accident reduction, fuel economy, and any problems that have occurred?

The petition by Trailways Bus Company has been formally endorsed by the Governor of Mississippi, Mr. Clifford Finch. Additionally, the International Association of Chiefs of Police have submitted a formal resolution to the NHTSA urging rulemaking applicable to all large trucks, buses and

combination vehicles in interstate commerce, requiring that such vehicles be equipped with speed governors to assure compliance with the national maximum speed limit.

This notice is only a request for comments concerning the subject petition. Any future rulemaking involving the substance of the petition will include further notice and opportunity to comment.

APPLICATIONS FOR FINANCIAL ASSISTANCE

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of the notice will be examined by an evaluation board, composed of NHTSA and other Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if its participation would contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the novelty, complexity, and significance of the ideas advanced and the ability of the applicant to represent the interests it espouses competently. Additionally, it must be demonstrated that the applicant does not have sufficient resources available to participate effectively in the proceeding in the absence of an award under this program.

If more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if justified. Compensation is to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim, but not later than 60 days after a completed claim is submitted.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address if its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by section 5.49 of the recently revised DOT regulations governing this financial assistance program (44 FR 4675; January 23, 1979). Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

It is requested that all comments concerning this petition be submitted with 10 copies.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in

fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 12, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator
for Rulemaking.

[FR Doc. 79-8036 Filed 3-16-79; 8:45 am]

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[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-3-66; Dockets 30313, 30675]

AIR MIDWEST, INC.

Subsidy Rates

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order 79-3-66, Air Midwest Subsidy Rates, Dockets 30313 and 30675.

SUMMARY: The Board adopted an order directing Air Midwest, Inc., to show cause why the following subsidy rates should not be established:

November 14, 1976—

January 14, 1977.....\$181,726

January 15, 1977-June 30, 1978.....\$1,559,330

Annual periods effective

July 1, 1978.....\$1,497,686

The order proposes a payment formula designed to distribute the subsidy in amounts roughly proportional to the carrier's seasonal need for subsidy support. It also establishes that a carrier need not actually carry mail to be eligible to receive subsidy under Section 406 of the Act, only that it has made its services available to the Post Office and has had a service mail rate established for it by the Board.

DATES: Parties must file notices of objection within ten days of the date of service and must file objections within 30 days of the date of service.

FOR FURTHER INFORMATION CONTACT:

John R. Hokanson or James Craun, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5132.

The complete text of Order 79-3-66 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-66 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board:
March 13, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8268 Filed 3-16-79; 8:45 am]

[6320-01-M]

NORTHERN-TIER SHOW-CAUSE PROCEEDING

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order; Northern-Tier Show-Cause Proceeding (79-3-60).

SUMMARY: The Board is proposing to award new and improved authority to the following carriers over the fol-

lowing routes along the Northern Tier from Alaska to the East Coast:

(1) Alaska Airlines (ASA),¹ North Central Airlines, Allegheny Airlines, American Airlines, and Wien Air Alaska—Minneapolis/St. Paul-Baltimore/Washington.

(2) Allegheny, North Central—Minneapolis/St. Paul-New York/Newark.

(3) Hughes Airwest, Allegheny, North Central, Braniff Airways, and Ozark Air Lines—Minneapolis/St. Paul-Spokane-Seattle/Portland.

(4) Frontier Airlines, Western Air Lines—Billings-Helena.

(5) Frontier—Denver-Helena, Denver-Pocatello/Idaho Falls.

(6) United Air Lines—Spokane-Chicago.

(7) ASA,¹ Wien, Western—Anchorage-Minneapolis/St. Paul.

(8) Western—Seattle/Portland-Spokane-Great Falls-Billings-Minneapolis/St. Paul-Milwaukee-Baltimore/Washington.

(9) ASA,¹ Wien—Portland/Seattle-Spokane-Missoula-Great Falls-Billings-Minneapolis/St. Paul.

(10) Braniff—Anchorage-Seattle/Portland-Spokane-Great Falls-Billings-Minneapolis/St. Paul-Milwaukee-Baltimore/Washington.

(11) Northwest Airlines—Spokane-Missoula-Great Falls-Bozeman-Billings-Salt Lake City-Denver.³

(12) Allegheny—Minneapolis/St. Paul-Philadelphia.

In addition, the Board is awarding interim exemption authority to ASA and Western to permit them to provide (1) unrestricted service among and between the points Spokane, Missoula, Helena, Butte, Bozeman, Great Falls, Billings, Bismarck-Mandan, Jamestown, Fargo, and Grand Forks; (2) Service among and between any of those points, on the one hand, and Anchorage, Seattle, Portland, Minneapolis/St. Paul, Milwaukee (Western only), Baltimore, and Washington, on the other; and (3) service among and between the points in (2), provided that all flights operated under this exemption authority serve one or more of the points listed in (1).⁴ ASA's exemption authority is further conditioned to require that the current level of service be maintained at five Southeast Alaska points as well as at a number of bush points served through subcontract.

The complete text of this order is available as noted below.

¹The authority will be conditioned to require the maintenance of June 13, 1978, service levels at five subsidy-eligible points and at bush points in Southeast Alaska.

²Authority between Anchorage and Seattle and Portland is excluded.

³Authority between Denver and Spokane is excluded.

⁴Spokane meets this requirement only after one daily round trip serving at least one of the other small points is provided.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by April 12, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below. Persons having objections to the award of any of the interim exemption authority described above shall file with the Board and serve on the same parties, no later than April 23, 1979, answers indicating the reasons for the objections.

ADDRESSES: Objections to the issuance of a final order, or answers to the exemption awards, should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in the following dockets:

Objections to issuance of a final order: Docket 35023.

Answers to exemption awards: Dockets 33240, 33593, 33729.

In addition, copies of such filings should be served on Alaska Airlines; Allegheny Airlines; American Airlines; Braniff Airways; Frontier Airlines; Hughes Airwest; North Central Airlines; Northwest Airlines; Ozark Airlines; United Air Lines; Western Air Lines; Wien Air Alaska; City of Great Falls; Alaska Transportation Commission; Champion International Corporation; Seattle Parties; Spokane Parties; State of Minnesota; Minneapolis-St. Paul Metropolitan Airports Commission; Missoula Area Chamber of Commerce; City of Missoula; Missoula County; Chamber of Commerce of Bozeman, Montana; State of Maryland; Control Data Corporation; and the Great Falls Area Chamber of Commerce.

FOR FURTHER INFORMATION CONTACT:

Anne W. Stockvis, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5354.

SUPPLEMENTARY INFORMATION: In the event no objections are filed, the Board will enter an order making final the tentative findings and conclusions contained in the show-cause order. The interim exemption awards are effective until 60 days after final Board decision in this proceeding, except the authority to serve Jamestown, N.D., which is effective until 60 days after final Board action in any certification proceeding which involves Jamestown, or in any section 401(j) or 419 proceeding involving that point, whichever occurs first. Finally, the Board may amend or revoke the exemption authority at any time in its discretion without hearing.

The complete text of Order 79-3-60 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for order 79-3-60 to that address.

By the Civil Aeronautics Board:
March 12, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8266 Filed 3-16-79; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

FLORIDA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a press conference of the Florida Advisory Committee (SAC) of the Commission will convene at 2:00 p.m. and will end at 4:40 p.m. on March 22, 1979, Plaza II Room, Howard Johnson Plaza Motel, 200 SE 2nd, Miami, Florida 33131.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, 75 Piedmont Avenue, N.E. Atlantic, Georgia 30303.

The purpose of this meeting is to discuss recommendations for Police Review Board for the Dade County Public Safety Department.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 13, 1979.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 79-8147 Filed 3-16-79; 8:45 am]

[6335-01-M]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 1:00 p.m. and will end at 3:00 p.m. on April 12, 1979, at 209 East Broadway Suite No. 1, Bismarck, North Dakota 58501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission,

1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is an orientation meeting for newly rechartered SAC, planning for future activities, update on recent civil rights activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 13, 1979.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 79-8148 Filed 3-16-79; 8:45 am]

[6335-01-M]

WASHINGTON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 9:00 p.m. and will end at 10:00 p.m. on April 7, 1979, at 915 Second Avenue, Room 2854, Seattle, Washington 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Seattle, Washington 98174.

The purpose of this meeting is to discuss Administration of Justice Open Meetings and program plans.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 13, 1979.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc. 79-8149 Filed 3-16-79; 8:45 am]

[3510-13-M]

DEPARTMENT OF COMMERCE

National Bureau of Standards

FEDERAL I/O CHANNEL LEVEL INTERFACE STANDARDS

Exclusion Criteria and Procedures for Maintaining Exclusion List

The approval by the Secretary of Commerce of three input/output (I/O) channel level interface standards was announced in the FEDERAL REGISTER on February 16, 1979 (Vol. 44, No. 34, pp. 10098-10101). Those three standards are:

Federal Information Processing Standards Publication 60, I/O Chan-

nel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems.

In the first of these standards, it was stated that:

This standard is applicable to the acquisition of all ADP systems and peripheral equipment for those systems except those minicomputer, microcomputer, and other small scale systems which are specifically excluded by the National Bureau of Standards (NBS). A list of such currently excluded systems and the current criteria for exclusion will be developed and maintained by NBS and will be periodically distributed to all Federal agencies and be publicly available upon request.

A primary concern in excluding smaller systems from the requirement to conform with these standards is the cost of using such a complex interface relative to the cost of these smaller systems. Therefore, the exclusion criteria are based on the projected cost to the Government of ADP systems for which these standards are applicable. Accordingly, ADP systems having a Government purchase price of less than \$400,000 in their maximum normally employed configuration are to be incorporated in the initial exclusion list.

In this context, the "maximum normally employed configuration" includes all system hardware in a "tightly-coupled" system usually enclosed within a single room, but does not include modems or remote terminals. Only those terminals necessary to serve as operator's console(s) are included in the "maximum normally employed configuration." The cost of operating system software is to be included in the system purchase price, but not that of language processors, applications software, and other system software such as data base management systems.

It should be noted that, if a system is on the exclusion list, all configurations of that system—not just the "maximum normally employed configuration"—are exempt from conformance with these interface standards. If, in the process of procuring computer systems or peripherals, a Federal agency receives a bid for a system on the exclusion list and if that system is selected for acquisition, then compliance with these Federal interface standards is not required. The same holds true for the enhancement of previously installed systems which are on the exclusion list.

Use of this type of criteria is intended to simplify the exclusion process with regard to both its maintenance by NBS and its use by Federal agen-

cies and vendors when planning for future ADP systems. The \$400,000 threshold will be used by NBS in establishing and updating the exclusion list taking into account all technical, economic, and equipment availability information known to NBS staff.

As a first step in establishing the exclusion list, NBS has developed a proposed initial exclusion list. Any party may obtain a copy of that list by sending a written request to the Director, Institute for Computer Sciences and Technology (ICST), National Bureau of Standards, Washington, D.C. 20234. Written comments regarding the proposed initial list should be sent to the Director, ICST, and must be postmarked not later than May 4, 1979. Following review of these comments, NBS will establish the initial exclusion list and announce the availability of that list in the *FEDERAL REGISTER*.

Once the exclusion list has been established, all parties will be invited to submit to the Director, ICST, comments or recommendations regarding that list. Comments specifically identifying candidate systems which should be added to or removed from the exclusion list will be especially encouraged. Such comments should include information supporting the proposed addition or removal. Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS will maintain a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list will be sent on a regular basis. Any parties wishing to be included in this mailing list should send a written request to the Director, ICST. Notice of any proposed changes in the exclusion list will be published in the *FEDERAL REGISTER* and will also be sent to all those on the mailing list. Interested parties will then be allowed forty-five (45) days in which to submit written comments regarding the proposed changes. Following this, NBS will make a determination on the proposed changes and announce that determination in the *FEDERAL REGISTER*. Written notice of that determination will also be sent to all parties on the mailing list and to any other parties who have otherwise indicated a desire to be so informed.

The exclusion list developed according to the procedures outlined above will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards them-

selves, but are provided for in the standards.

Dated: March 15, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-8294 Filed 3-16-79; 8:45 am]

[3510-17-M]

Office of the Secretary

ADVISORY COMMITTEES

Solicitation of Public Views on Essentiality

In accordance with section 7(b) of the Federal Advisory Committee Act, 5 U.S.C. App., and Office of Management and Budget Circular A-63, Transmittal Memorandum No. 5, as revised, this Department is commencing a comprehensive review into the essentiality of its advisory committees. To comply with the law, the Department is undertaking this annual review of each advisory committee to determine: (1) whether such committee is carrying out its purpose; (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised; (3) whether it should be merged with other advisory committees; or (4) whether it should be abolished. This review will cover each of the 96 advisory committees officially chartered under the Federal Advisory Committee Act, as of December 31, 1978. The names of these committees and the responsible Commerce Department component are accounted for in the listing below.

Public comment is hereby solicited on the abolishment, consolidation, or continuation of each of these committees. Such comments should be addressed as follows: U.S. Department of Commerce, Assistant Secretary for Administration, Room 5830, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Comments received by April 6, 1979 in response to this solicitation will be considered by the Department in the course of its comprehensive review. All comments which are received will be available for public inspection and copying at the Department's Central Reference and Records Facility, Room 5319, Main Commerce Building, 14th & Constitution Avenue, N.W., Washington, D.C. 20230. Any questions regarding this matter may be directed to Mr. Donald Budowsky, Office of Organization and Management Systems, Room 5319, Main Commerce Building, telephone: 202-377-4217.

Dated: March 13, 1979.

GUY CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

NOTICES

U.S. DEPARTMENT OF COMMERCE ADVISORY COMMITTEES

[Chartered under Pub. L. 92-463 as of Dec. 31, 1978]

Committee	Reporting responsibility*
Advisory Board to the U.S. Merchant Marine Academy	MARAD
Advisory Committee on East-West Trade	ITA
Advisory Committee on Federal Policy on Industrial Innovation	O/AS-S&T
Advisory Committee on Fire Training and Education for the NFPCA	USFA
Advisory Committee for International Legal Metrology	NBS
Board of Visitors for the National Academy for Fire Prevention & Control	USFA
Building Technology Advisory Committee	NBS
Census Advisory Committee on Agriculture Statistics	CENSUS
Census Advisory Committee of the American Economic Association	CENSUS
Census Advisory Committee of the American Marketing Association	CENSUS
Census Advisory Committee for the American Statistical Association	CENSUS
Census Advisory Committee on the Asian and Pacific Americans Population for 1980 Census	CENSUS
Census Advisory Committee on the Black Population for the 1980 Census	CENSUS
Census Advisory Committee on Housing for 1980 Census	CENSUS
Census Advisory Committee on Population Statistics	CENSUS
Census Advisory Committee on the Spanish Origin Population for the 1980 Census	CENSUS
Coastal Zone Management Advisory Committee	NOAA
Commerce Technical Advisory Board (CTAB)	O/AS-S&T
Committee of ISAC Chairman for Multilateral Trade Negotiations	ITA
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee	ITA
Computer Systems Technical Advisory Committee	ITA
Economic Advisory Board	Chief Economist
Electromagnetic Radiation Management Advisory Council	NTIA
Electronic Instrumentation Technical Advisory Committee	ITA
Exporters' Textile Advisory Committee	ITA
Fishery Management Councils (FMC):	
Caribbean FMC	NOAA
Advisory Panel for the Caribbean FMC	NOAA
Scientific and Statistical Committee for the Caribbean FMC	NOAA
Gulf of Mexico FMC	NOAA
Advisory Panel for the Gulf of Mexico FMC	NOAA
Scientific and Statistical Committee for the Gulf of Mexico FMC	NOAA
Mid-Atlantic FMC	NOAA
Advisory Panel for the Mid-Atlantic FMC	NOAA
Scientific and Statistical Committee for the Mid-Atlantic FMC	NOAA
New England FMC	NOAA
Advisory Panel for the New England FMC	NOAA
Scientific and Statistical Committee for the New England FMC	NOAA
North Pacific FMC	NOAA
Advisory Panel for the North Pacific FMC	NOAA
Scientific and Statistical Committee for the North Pacific FMC	NOAA
Pacific FMC	NOAA
Advisory Panel for the Pacific FMC	NOAA
Scientific and Statistical Committee for the South Atlantic FMC	NOAA
South Atlantic FMC	NOAA
Advisory Panel for the South Atlantic FMC	NOAA
Scientific and Statistical Committee for the South Atlantic FMC	NOAA
Western Pacific FMC	NOAA
Advisory Panel for the Western Pacific FMC	NOAA
Scientific and Statistical Committee for the Western Pacific FMC	NOAA
Frequency Management Advisory Council	NTIA
Importers' Textile Advisory Committee	ITA
Industry Policy Advisory Committee for Multilateral Trade Negotiations (MTN)	ITA
Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for MTN	ITA
ISAC on Automotive Equipment for MTN	ITA
ISAC on Communication Equipment and Non-Consumer Electronic Equipment for MTN	ITA
ISAC on Construction, Mining, Agricultural, and Oil Field Machinery and Equipment for MTN	ITA
ISAC on Consumer Electronic Products and Household Appliances for MTN	ITA
ISAC on Drugs, Soaps, Cleaners, and Toilet Preparations for MTN	ITA
ISAC on Electrical Machinery, Power Boilers, Nuclear Reactors, and Engines and Turbines for MTN	ITA
ISAC on Ferrous Metals and Products for MTN	ITA
ISAC on Food and Kindred Products for MTN	ITA
ISAC on Hand Tools, Cutlery, and Tableware for MTN	ITA
ISAC on Industrial Chemicals and Fertilizers for MTN	ITA
ISAC on Leather and Products for MTN	ITA
ISAC on Lumber and Wood Products for MTN	ITA
ISAC on Machine Tools—Other Metalworking Equipment and Other Nonelectrical Machinery for MTN	ITA
ISAC on Miscellaneous Manufactures, Toys, Musical Instruments, Furniture, Etc., for MTN	ITA
ISAC on Nonferrous Metals and Products for MTN	ITA
ISAC on Office and Computer Equipment for MTN	ITA

—Continued

Committee	Reporting responsibility*
ISAC on Other Fabricated Metal Products for MTN.....	ITA
ISAC on Paints, Gum and Wood Chemicals, and Miscellaneous Chemical Products for MTN.....	ITA
ISAC on Paper and Products for MTN.....	ITA
ISAC on Photographic Equipment and Supplies for MTN.....	ITA
ISAC on Railroad Equipment and Miscellaneous Transportation Equipment for MTN.....	ITA
ISAC on Retailing for MTN.....	ITA
ISAC on Rubber and Plastics Materials for MTN.....	ITA
ISAC on Scientific and Controlling Instruments for MTN.....	ITA
ISAC on Stone, Clay, and Glass Products for MTN.....	ITA
ISAC on Textiles and Apparel for MTN.....	ITA
Management-Labor Textile Advisory Committee.....	ITA
Marine Fisheries Advisory Committee.....	NOAA
National Advisory Committee on Oceans and Atmosphere.....	NACOA
National Bureau of Standards Visiting Committee.....	NBS
National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete.....	O/AS-S&T
National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials.....	O/AS-S&T
National Public Advisory Committee on Regional Economic Development.....	EDA
Numerically Controlled Machine Tool Technical Advisory Committee.....	ITA
Patent and Trademark Office Advisory Committee.....	PATENT
President's Export Council.....	ITA
President's Export Council Subcommittee on Export Administration.....	ITA
Public Advisory Committee for Trademark Affairs.....	PATENT
Sea Grant Review Panel.....	NOAA
Semiconductor Technical Advisory Committee.....	ITA
Telecommunications Equipment Technical Advisory Committee.....	ITA
Travel Advisory Board.....	USTS
U.S. INMARSAT (International Maritime Satellite) Preparatory Committee Working Group.....	NTIA

* Acronyms used are as follows:

EDA—Economic Development Administration.
 ITA—Industry and Trade Administration.
 MARAD—Maritime Administration.
 NACOA—National Advisory Committee on Oceans and Atmosphere.
 NBS—National Bureau of Standards.
 NOAA—National Oceanic and Atmospheric Administration.
 NTIA—National Telecommunications and Information Administration.
 O/AS-S&T—Office of Assistant Secretary for Science and Technology.
 PATENT—Patent and Trademark Office.
 USFA—United States Fire Administration (formerly the National Fire Prevention and Control Administration).
 USTS—United States Travel Service.

[FR Doc. 79-8146 Filed 3-16-79; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

PROPOSED FUTURES CONTRACT

Availability, Correction

In the document appearing on page 13557 in the FEDERAL REGISTER of March 12, 1979 regarding the Frozen Broiler Chicken Mercantile Exchange, the telephone number for the Executive Secretariat is incorrect. The correct telephone number is (202) 254-6314.

GARY L. SEEVERS,
Acting Chairman.

MARCH 3, 1979.

[FR Doc. 79-8097 Filed 3-16-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on High Energy Lasers

Meeting

The Defense Science Board Task Force on High Energy Lasers will meet in closed session on April 6-7, 1979 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on Scientific and Technical Matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on High Energy Lasers has been scheduled for April 6-7, 1979 to review specific aspects of laser devices, pointing and tracking, and optics technology. The Task Force will focus on major technical issues that may limit the performance characteristics and potential utility of high energy lasers to missions of interest to the Department of Defense.

In accordance with 5 U.S.C. App. I 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

Dated: March 14, 1979.

H. E. LOFDAHL,
Deputy Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-8208 Filed 3-16-79; 8:45 am]

[3810-70-M]

DEFENSE SCIENCE BOARD TASK FORCE ON V/STOL AIRCRAFT, PHASE II

Meeting

The Defense Science Board Task Force on V/STOL Aircraft, Phase II will meet in closed session on April 10, 1979 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs to the Department of Defense.

A meeting of the Task Force on V/STOL Aircraft, Phase II has been scheduled for April 10, 1979 to evaluate the potential of V/STOL technology for future military and naval missions.

In accordance with 5 U.S.C. App. I 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

Dated: March 14, 1979.

H. E. LOFDAHL,
Deputy Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-8210 Filed 3-16-79; 8:45 am]

[3810-70-M]

DEFENSE SYSTEMS MANAGEMENT COLLEGE

Board of Visitors Meeting

A meeting of the Defense Systems Management College Board of Visitors will be held in Building 202, Fort Belvoir, VA, on Monday, 7 May 1979, from 8:30 a.m. until 5:00 p.m. The agenda will include a review of the educational, research and publications accomplishments and plans, resources, and operations. The meeting is open to the public; however, because of limitations on space available, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend should call the DSMC Director, Operational Support and Administration (703-664-1175) to reserve a seat.

Dated: March 14, 1979.

H. E. LOFDAHL,
Deputy Director, Correspondence and Directives, Room 3B946, Pentagon, Washington, DC 20301.

[FR Doc. 79-8209 Filed 3-16-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

ALASKA POWER ADMINISTRATION

Extension of Power Rates for Snettisham Project on an Interim Basis

AGENCY: Alaska Power Administration, Department of Energy

ACTION: Notice of extension of power rates.

SUMMARY: On March 9, 1979, the Assistant Secretary for Resource applications confirmed and approved, on an interim basis, an extension of Rate Schedule SN-F-1 for wholesale firm power service from the Snettisham Project, Alaska, effective April 1, 1979. The rate is subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: The effective date for the power rates on an interim basis is April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert J. Cross, Administrator, Alaska Power Administration, P.O. Box 50, Juneau, Alaska 99802.

John J. DiNucci, Office of Power Marketing Coordination, Department of Energy, 12th Street & Pennsylvania Avenue, NW., Washington, DC 20461.

SUPPLEMENTARY INFORMATION: The Snettisham Project Power Rate Schedule SN-F-1 was approved by the Secretary of the Interior for the five-year period from December 1, 1973 through November 30, 1978. On November 28, 1978, the Assistant Secretary for Resource Applications of the Department of Energy extended the rate schedule for a period of 4 months through March 31, 1979. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to confirm, approve, and place in effect power and transmission rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve such rates on a final basis.

The rates to be placed in effect on an interim basis will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Washington, D.C., March 9, 1979.

GEORGE S. McISAAC,
*Assistant Secretary
Resource Applications.*

DEPARTMENT OF ENERGY

ASSISTANT SECRETARY FOR RESOURCE APPLICATIONS

[Rate Order No. APA-11]

ALASKA POWER ADMINISTRATION— SNETTISHAM PROJECT POWER RATES ORDER CONFIRMING AND APPROVING EXTENSION OF POWER RATES ON AN INTERIM BASIS

MARCH 9, 1979.

Pursuant to Section 302(a) of the Department of Energy Organization

Act, Pub. L. 95-91, the functions of the Secretary of the Interior under Section 204 of the Flood Control Act of 1962, Pub. L. 87-874, 76 Stat. 1173, 1193, for the Snettisham Project were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 F.R. 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary.

BACKGROUND

Existing Rates

Rate Schedule SN-F-1, for wholesale firm power service from the Snettisham Project was approved by the Secretary of the Interior, effective December 1, 1973, for a five-year period ending November 30, 1978. I extended the approval through March 31, 1979.

Public Notice and Comment

Notice of a meeting to present the rate proposal was printed in the local area newspaper on October 13, 18, and 23, 1978. On October 11, 1978, the Chief, Power Division was interviewed by a local television station and discussed the agenda for the public meeting and the rate proposal. On October 25, 1978, a public meeting was held in Room 117 of the Juneau Federal Building.

The Administrator and Chief, Power Division, explained the legislative authorities and background information about the project's construction and APA policies for power sales and wholesale power rates.

Photographs maps, and graphs were used to illustrate the project's physical layout, Juneau area power requirements, and project sales figures. Project rate and repayment requirements were explained. A question and answer session concluded the meeting.

Public participation at the meeting was slight. No controversial issues were raised, and there were no objections to the rate proposal.

DISCUSSION

Project Repayment

The Snettisham Project was authorized by Section 204 of the Flood Control Act of 1962, Pub. L. 87-874, 76 Stat. 1173, 1193, in accordance with the Army-Interior Agreement of March 14, 1962. The project was constructed by the Corps of Engineers. Upon completion of construction, it was transferred to the Alaska Power Administration for operation and maintenance. Initial project construction was completed December 1, 1973. However, because of serious transmission problems, full commercial production of power did not start until October 30, 1975. Construction of the Long Lake phase of the Snettisham Project was completed in 1978.

Subsection 201(a) of the Water Resources Development Act of 1976, Pub. L. 94-587, provides that the costs of replacing and relocating the original Salisbury Ridge section of the 138-kilovolt transmission line shall be non-reimbursable. Subsection 201(b) of the Act further modifies the repayment provisions for the project by providing that the repayment period shall be sixty years, that the annual payments for the first ten years shall rise from 0.1 per centum of the total principal amount to be repaid the first year to 1.0 per centum the tenth year, and that the subsequent annual payments for the remaining fifty years shall be one-fiftieth of the remaining balance, including interest over the sixty-year period.

The report of the Senate Committee on Public Works contains the following explanation of the purpose of subsection 201(b):

"The purpose of this subsection is to provide temporary relief Juneau power users by altering the repayment schedule and amounts. Lower payments during the first ten years of the proposed sixty-year repayment period would be made possible by deferring the interest for this period.

"The total obligation (capital costs, plus interest) will still be met, as the interest deferred during the first ten

years will be covered in the next fifty years.

"This temporary relief is necessary in view of the additional stand-by generating facilities which local interest had to install because of the numerous power outages experienced since 1972." S. Rept. No. 94-1255, 94th Cong., 2d Sess. 124 (1976).

Several questions arise as to the proper interpretation of this relief measure. A literal application of the precise terms of subsection 201(b) is impossible. The annual payment to the Treasury for the repayment of principal, which is the net result of revenues less expenses, cannot be controlled on the precise basis contemplated by the statute. The requirement for equal annual payments of principal during the eleventh through sixtieth years would mean that a rate in the eleventh year that would produce revenues sufficiently large to cover the principal payment plus the interest payment that year would be impossibly high; and the rate would decline slightly each year as interest payments were reduced.

The Current Power Repayment Study shows that the existing 15.6 mills per kwh rate for energy will not provide sufficient revenues to achieve payout in the required 60-year repayment period, and that an immediate increase in the rate would be required for 60-year payout. However, increasing the rate now would not provide the temporary relief to consumers that is required by the 1976 Act.

On the other hand, deferring all project interest during the initial 10-year development period would require an immediate rate reduction. Previous studies have shown this reduction would be approximately four and one-half mills per kwh. The intent of the Act is to provide temporary relief to power users in the Juneau area. However, lowering the rate by this amount would lead to a relatively small reduction in ultimate consumer retail rates. Moreover, lowering the rate today would require still higher rates in the future.

The APA proposal to extend the existing rate for the next five years will provide temporary relief to Juneau area consumers. It has met with complete public acceptance. APA has pre-

pared a Revised Power Repayment Study which assumes maintenance of the existing rate for seven years and a projected rate of 26 mills starting at the end of the 10-year development period. The study shows that maintenance of the existing rate for seven years would produce revenues sufficient to pay all project operation and maintenance, wheeling, and required amortization costs, and a portion of the interest, and that the rate of 26 mills thereafter will achieve payout within the statutory 60 years. Under these circumstances it is believed that extension of the existing rate level at this time, even though some interest payments are made, complies with the purpose of the 1976 Act.

The power repayment studies assume that the interest that is deferred during the first 10 years is capitalized and amortized at an interest rate of 3 percent, which is the project interest rate. This is the basis on which rate studies were submitted to the Congress during the consideration of the relief measure. Use of the project rate rather than the current rate of 7 percent, which would be required under the normal practice prescribed in the Departmental Manual (Department of Interior 730 DM 4, adopted for DOE by IMD 1701), is deemed consistent with the intent of the 1976 Act.

Rate Design

During the next five years there will be a surplus of energy available from the project. The project supplies the entire Juneau area power requirement except for a small part provided by two local utility hydro plants. The Snettisham Project will provide for all future load growth.

Since the surplus of power and energy is available, a complex rate structure incorporating peak load and seasonal pricing is not required. The rate recommended is a straight energy charge of 15.6 mills per kwh.

Environmental Impact

A substantial surplus of generating capacity will be available from the Snettisham Project during the next five years. Extending the existing rate would not change area power use patterns or requirements. The public hearings and other public outreach efforts raised no objections or controversial issues. Clearly, therefore, no significant impacts on the human environ-

ment within the meaning of the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended by Pub. L. 94-83) and implementing regulations would be caused by implementing the rate proposal.

Price Stability

Continuing the existing rate for project power complies with the price standards of the President's Council on Wage and Price Stability.

Availability of Information

Information regarding this rate adjustment, including studies, comments, transcripts and other supporting material, is available for public review in the offices of the Alaska Power Administration, Room 825, Federal Building, 709 West Ninth Street, Juneau, Alaska 99802 and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Submission to the Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

ORDER

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective April 1, 1979, Rate Schedule SN-F-1. This rate shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the FERC confirms and approves it on a final basis.

Issued at Washington, D.C., this 9th day of March 1979.

GEORGE S. McISAAC,
Assistant Secretary for
Resource Applications.

SCHEDULE SN-F-1

DEPARTMENT OF ENERGY
ALASKA POWER ADMINISTRATION
SNETTISHAM PROJECT, ALASKA
SCHEDULE OF RATES FOR WHOLESALE FIRM
POWER SERVICE

Effective: December 1, 1973.

Available: In the area served by the Snettisham Project, Alaska.

Applicable: To wholesale power customers for general power service.

Character of Service: Alternating current, 60 hertz, three-phase.

Monthly Rate: CAPACITY CHARGE: None.

ENERGY CHARGE: All energy at 15.6 mills per kilowatt-hour.

Minimum Annual Capacity Charge: None.

Minimum Annual Energy Charge: As provided for under appropriate contract terms.

Adjustments: For Transformer Losses: If delivery is made at the high-voltage side of customer's substation but metered at the low-voltage side, the meter readings will be increased two percent to compensate for transformer losses.

For Power Factor: The customer will normally be required to maintain a power factor at the point of delivery of no less than 90 percent. Adjustments for low power factor will be provided for under appropriate contract terms.

For Auxiliary Power Service: Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy supplied by the United States will be determined.

[FR Doc. 79-8042 Filed 3-16-79; 8:45 am]

[6450-01-M]

NATIONAL PETROLEUM COUNCIL, OIL SUPPLY, DEMAND, AND LOGISTICS TASK GROUP OF COMMITTEE ON REFINERY FLEXIBILITY

Meeting

Notice is hereby given that the Oil Supply, Demand, and Logistics Task Group of the National Petroleum Council's Committee on Refinery Flexibility will meet in the 20th floor Conference Room of the Gulf Building, 712 Main Street, Houston, Texas on Friday, March 30, 1979, starting at 9:30 a.m.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee.

The tentative agenda for the Task Group meeting is as follows:

1. Introductory remarks.
2. Review decisions made at the March 2, 1979 meeting of the Coordinating Subcommittee and March 7 meeting of the Main Committee.
3. Discuss development of the supply-demand projections.
4. Review progress of Task Group members in completing their assigned tasks.
5. Discuss other pertinent matters relating to the overall assignment of the Task Group.

All meetings are open to the public. The Chairmen of the Task Group are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mr. Robert Long, U.S. Department of Energy, (202) 252-5629, prior to the meeting, and reasonable provision will be made for their appearance on the agenda. Summary/minutes of the Task Group meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 13, 1979.

ALVIN L. ALM,
Assistant Secretary,
Policy and Evaluation.

[FR Doc. 79-8155 Filed 3-16-79; 8:45 am]

[6450-01-M]

RAYMOND BEEMAN AND STEVEN
BRAJKOVICH

Intent To Grant Exclusive Patent License

Notice is hereby given of an intent to grant to Raymond Beeman and Steven Brajkovich, an exclusive license to manufacture, use, and sell in the United States the invention described in U.S. Patent No. 4,094,492, entitled "Variable Orifice Using an Iris Shutter", issued June 13, 1978, to the United States of America, as represented by the Department of Energy (DOE). A copy of the subject patent can be obtained from the U.S. Patent and Trademark Office, Washington, D.C. 20231.

The proposed license will have a duration of five years and will contain other terms and conditions to be negotiated by the parties, in accordance with 42 U.S.C. 5908(h) and 10 CFR Part 781. Third parties are hereby advised of their right to file, within sixty days of this Notice, with the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20545, either of the following, together with supporting documents:

(i) An application for a nonexclusive license to manufacture, use, or sell the invention in accordance with Title 10 CFR Part 781, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously; or

(ii) A statement setting forth reasons why it would not be in the public interest to grant the proposed license.

The Assistant General Counsel for Patents will review all written responses to this Notice and will provide opportunity for an oral hearing before granting the proposed exclusive license. Requests for oral hearing shall be made to the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20545.

The license will be granted if a determination can be made by DOE, following expiration of the sixty day notice period, (i) that no applicant for a nonexclusive licensee has brought or

will bring the invention to the point of practical application within a reasonable period and (ii) that the granting of the license would be in the public interest after consideration of all the facts, evidence, and argument which third parties may present to the Assistant General Counsel for Patents.

Third parties who participate as outlined above are further advised of their right to appeal, in accordance with the appeal procedures of 10 CFR 781.51, any decision of the Assistant General Counsel for Patents concerning the grant of the proposed exclusive license or the denial of its application of a nonexclusive license under the subject patent.

Dated on this 13th day of March 1979.

For the Department of Energy.

LYNN R. COLEMAN,
General Counsel.

[FR Doc. 79-8156 Filed 3-16-79; 8:45]

[6450-01-M]

[Docket No. ER79-239]

OHIO POWER CO.

Proposed Changes in Rates and Charges

MARCH 14, 1979.

Take notice that American Electric Power Service Corporation (AEP) on March 6, 1979, tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio Power), Modification No. 8 dated February 1, 1979 to the Facilities and Operating Agreement dated September 6, 1962 between Ohio Power Company and Duquesne Light Company, designated Ohio's Rate Schedule FERC No. 33.

AEP states that Section 1 of Modification No. 8 provides for an increase in the Demand Charge for Short Term Power from \$0.60 to \$0.70/kw-week and Section 2 provides for an increase in the transmission charge for third party Short Term Power transactions from \$0.15 to \$0.175/kw-week.

AEP further states that since the use of Short Term Power Service Schedule cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

AEP indicates that Exhibit I which was included with the filing of this

Modification, demonstrates that the increase in revenues, which would have resulted had the Modification been in effect during the twelve-month period ending December 1978, would have been \$150,083.34 (i.e., from \$3,354,544.70 to \$3,504,628.04).

AEP proposes an effective date of April 30, 1979, and therefore requests waiver of the Commission's notice requirements.

According to AEP copies of this filing were served upon Duquesne Light Company, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 30, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8145 Filed 3-16-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-227]

PACIFIC POWER & LIGHT CO.

Proposed Extension of Term of Rate Schedule

MARCH 14, 1979.

Take notice that Pacific Power & Light Company (Pacific) on March 2, 1979, tendered for filing in accordance with Section 35.13 of the Commission's Regulations, a ten-year extension of the rate schedule entitled Agreement for Hourly Coordination of the Projects on the Mid-Columbia River

Company	FPC rate schedule
Pacific Power & Light Company.	125 and Supplements 1 and 2.
The Washington Water Power Company (Water Power).	91.
Puget Sound Power & Light Company (Puget).	58.
Portland General Electric Company (Portland General).	28.

Pacific requests waiver of the Commission's notice requirements to

permit this rate schedule to become effective July 1, 1977, which it claims is the date of commencement of service.

Copies of the filing were supplied to Water Power, Puget, and Portland General.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 26, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8143 Filed 3-16-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-236]

PUBLIC SERVICE CO. OF INDIANA, INC.

Proposed Tariff Change

MARCH 14, 1979.

Take notice that Public Service Company of Indiana, Inc. (PSCI) on March 5, 1979, tendered for filing pursuant to the Kentucky-Indiana Power Planning and Operating Agreement between East Kentucky Power Cooperative, Inc., Indianapolis Power & Light Company, Kentucky Utilities Company, and Public Service Company of Indiana, Inc. a change in the demand charge for Unit Power included in Service Schedule B of the Agreement.

PSCI states that said change in the demand charge for Unit Power was determined by using plant costs per kilowatt, fixed charge rates and annual plant operation and maintenance expenses applicable to all Pool Units for the Unit Year ending March 31, 1980.

PSCI proposes an effective date of April 1, 1979, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon East Kentucky Power Cooperative, Inc., Indianapolis Power & Light Company, Kentucky Utilities Company, Public Service Commission of Indiana, and Public Service Commission of Kentucky, according to PSCI.

Any person desiring to be heard or to protest said filing should file a peti-

tion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before March 30, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8144 Filed 3-16-79; 8:45]

[1505-01-M]

Office of Hearings and Appeals

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

January 29 through February 2, 1979

Correction

In FR Doc. 79-6760 appearing at page 12483 in the issue for Wednesday, March 7, 1979, in the listing for *John Wight, Billings Montana, DEE-1417, crude oil* (third column of page 12484), "... exception request should be granted." Should have read "... exception request should be denied."

[6450-01-M]

OBJECTIONS FILED

Week of February 26 Through March 2, 1979

Notice is hereby given that during the week of February 26 through March 2, 1979 the Notice of Objections to a Proposed Remedial Order listed in the Appendix to this notice was filed with the Office of Hearings and Appeals of the Department of Energy.

On or before April 9, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Order described in the Appendix to this notice must file a request to participate, pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). On or before April 18, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official

service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C., March 13, 1979.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

Cosby Oil Company, Inc., Whittier, California, DRO-0179, motor gasoline

On February 27, 1979, the Cosby Oil Company, Inc. filed a Notice of Objection to a Proposed Remedial Order which the DOE Region IX Office issued to the firm on February 12, 1979. In the Proposed Remedial Order, the Regional Office found that during the period November 1, 1973 through April 30, 1974, the Cosby Oil Company, Inc. sold motor gasoline to customers in California at prices which were in excess of the ceiling price levels specified in 10 CFR Part 212. According to the Proposed Remedial Order Cosby Oil Company, Inc.'s violations of the provisions of 10 CFR Part 212 resulted in overcharges to its customers of \$103,734.61.

[FR Doc. 79-8103 Filed 3-16-79; 8:45 am]

[6450-01-M]

IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

Issuance of Proposed Decision and Order for Public Comment

In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order contains special procedures and standards that the DOE has tentatively formulated in order to distribute to qualified persons the sum of \$42,240,000. This amount will be tendered to the Department of Energy by the Gulf Oil Corporation pursuant to a consent order entered into by Gulf and the DOE Office of Special Counsel on July 26, 1978 and published for public comment. See 43 FR 34,185 (1978). The Proposed Decision and Order also describes the classes of purchasers who may be entitled to refunds if the proposed procedures are adopted by the DOE.

The Office of Hearings and Appeals had previously issued proposed procedures for distributing the amount to be remitted by Gulf. Those procedures had been prepared and published for comment in response to a Petition for Special Redress filed by the Office of

Special Counsel. See 43 FR 38,547 (1978). Written and oral comments were submitted by interested parties concerning those procedures and were considered by the Office of Hearings and Appeals. Many of the suggestions made by the commenters are reflected in the procedures proposed today. It should be noted that under the new proposal, the refund amount will be apportioned purely on a volumetric basis without regard to the level of distribution at which the purchase was made. If the total amount claimed under this distribution mechanism exceeds the total refund amount less administrative expenses, claims will be reduced proportionally. Furthermore, as noted in the Proposed Decision and Order, the DOE is considering the feasibility of utilizing the internal records of Gulf to compute refunds to certain classes of direct purchasers and eliminating the requirement that those purchasers file formal refund requests. In most other respects, however, the procedures that we propose today do not differ substantially from those contained in the earlier proposal.

It should be pointed out that until final procedures are adopted, no claims for refunds can be accepted. Refund applications therefore should not be filed at this time. Appropriate public notice will be given when the processing of claims is begun, and ample time will be provided for the filing of claims.

Any member of the public may submit written comments with respect to the proposed refund procedures. Comments should be submitted on or before April 15, 1979 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461. For further information contact George B. Breznay, Deputy Director, Office of Hearings and Appeals, telephone (202) 254-9681.

Dated: March 13, 1979.

MELVIN GOLDSTEIN,
Director, Office of
Hearings and Appeals.

PROPOSED DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

SPECIAL REFUND PROCEDURES

MARCH 13, 1979.

Name of Petitioner: Office of Special Counsel for Compliance, Department of Energy.

Date of Filing: March 2, 1979.

Case Number: DFF-0001.

This proceeding established special procedures that the Department of Energy intends to use in refunding to customers of the Gulf Oil Corporation approximately \$42,240,000. On August 22, 1978, the Office of Hearings and

Appeals issued a Decision and Order in response to a Petition for Special Redress filed by the Office of Special Counsel, setting forth refund procedures that it intended to implement on an interim basis pending receipt of written comments and oral presentations. *Office of Special Counsel for Compliance*, 1 DOE Par. 82,586 (1978); 43 Fed. Reg. 38,548 (1978). A public hearing was held on September 26, 1978, and written comments were filed by 34 individuals and firms.

On February 9, 1979, the Department of Energy adopted new procedural regulations for the distribution of refunds. Notice of Rulemaking, 44 Fed. Reg. 8561 (1979). Those regulations, which are contained in Subpart V of the DOE procedural regulations (10 CFR Part 205), establish special refund procedures which can be activated by the Office of Hearings and Appeals upon petition by the Office of Special Counsel or by the Office of Enforcement. In view of the adoption of these special refund regulations, the Office of Special Counsel has withdrawn the Petition for Special Redress that it had filed and instead requested that the Special Refund Procedures set forth in Subpart V be activated with respect to the Gulf Consent Order. See 10 CFR 205.281.

After considering the new Petition, and the comments submitted in the original proceeding, we have concluded that a revised determination should be issued in proposed form with regard to the new Petition. This revised determination incorporates a number of the changes recommended by individuals who submitted comments in the prior proceeding.

I. BACKGROUND

On March 1, 1979, the Special Counsel for Compliance of the Department of Energy (OSC) filed a Petition for the Implementation of Special Refund Procedures. In that Petition the OSC requested that the Office of Hearings and Appeals adopt and implement procedures in order to distribute overcharges to purchasers of products sold by the Gulf Oil Company. According to the Petition, these refunds are being paid by Gulf pursuant to a Consent Order entered into by Gulf and the OSC on July 26, 1978. 43 Fed. Reg. 34,185 (1978); see 10 CFR 205.281. The Special Counsel stated that he was not able to identify at that time particular purchasers that would be entitled to the refunds.

In the Consent Order, the OSC and Gulf reached an agreement to settle a compliance proceeding that had been instituted against Gulf in April 1977 by the issuance of a Notice of Proposed Disallowance (NOPD). The Federal Energy Administration alleged in the NOPD that Gulf had overstated

its costs with respect to interaffiliate imported crude oil transactions by \$79.6 million for the period October 1973 through May 1975. The DOE subsequently reduced the amount of disallowance by \$5.7 million on the basis of corrections to information that had been reported to the DOE and adjustments to maximum and representative prices for crude oil that had been transferred by Gulf. In the Consent Order the OSC and Gulf agreed to settle the disallowance claim and also any overrecoveries that Gulf had made in connection with its purchases of Indonesian Katapa crude oil through a foreign affiliate during the period between August 1973 and January 1976. The Consent Order also referred to overrecoveries alleged in a Notice of Probable Violation issued to Gulf on May 8, 1974.

Under the terms of the Consent Order, Gulf agreed to tender \$42,240,000 to the United States in lieu of any further remedial action with respect to these matters. However, the Consent Order states that:

Gulf and DOE recognize that the time periods involved and the determination of proper costs allowable make it most difficult to determine whether any person sustained an overcharge in the purchase of covered products from Gulf * * *

In view of the difficulties that were perceived in reaching a determination as to whether any person was overcharged as a result of the alleged Gulf actions referred to in the Consent Order, the DOE agreed to accept responsibility for establishing an administrative procedure for evaluating claims for a portion of the refund and making restitution to persons presenting valid claims. In the present Petition, the OSC requests that special procedures be established by the Office of Hearings and Appeals under Part 205, Subpart V for the distribution of refunds to affected persons.

II. AUTHORITY

Section 205.280 of the DOE procedural regulations provides that special refund procedures may be adopted by the Office of Hearings and Appeals upon petition by a DOE enforcement official when that official is unable to readily identify persons who are entitled to refunds specified in a remedial order or a consent order. After considering the Petition filed by the OSC and the record in this proceeding, we have determined that special procedures should be implemented in order to compensate injured customers in this proceeding. Gulf is a major integrated petroleum firm engaged in the production, transportation, refining and marketing of crude oil and an extensive schedule of petroleum products. It is one of the largest petroleum firms in the United States, and the

purchasers of its products number in the millions. Because of the nature of the particular pricing practices alleged in the NOPD, which concern a fundamental element in a refiner's calculation of maximum permissible prices, each purchaser of Gulf products marketed throughout the United States was potentially affected. These factors and the flexibility accorded refiners under the refiner price rule of the Mandatory Petroleum Regulations make it extremely difficult to allocate specific overcharges to any particular sales transaction or to identify specific customers who were overcharged. That determination is further complicated in this case by the fact that the practices in question occurred as long ago as five years.

In other words, even though overcharges may have occurred, the discretion that Gulf possessed in determining its prices makes it very unlikely that any individual claimant could prove the nature and extent of a direct injury. Therefore, unless special procedures are adopted, there would appear to be little likelihood that individual purchasers and consumers would be able to obtain refunds. This situation would occur despite the fact that based on the Consent Order purchasers and consumers as a class are entitled to refunds. Under these circumstances it is necessary to implement special procedures to ensure that the persons who have been most affected by Gulf's alleged transfer price mechanism will benefit from the terms of the Consent Order.

We have therefore concluded that special claims procedures are necessary and appropriate in this case. The specific procedures that will be implemented in this proceeding for distributing refunds are set forth in the Appendix. They will be explained in detail below.

III. NOTICE TO PURCHASERS; ADMINISTRATION OF CLAIMS

The type of regulatory violations referred to in the Consent Order could have had an effect during the relevant time period upon every purchaser of crude oil from Gulf under the Buy-Sell Program (10 CFR 211.65) and upon every purchaser of refined products or residual fuel oil from Gulf. Consequently, there are special problems associated with the establishment of a procedure for adjudicating claims and distributing refunds.

The large number of potential claimants first presents the question of the form of notice that should be given to individuals who wish to request a refund. We believe that notice should include publication in the FEDERAL REGISTER and the preparation of appropriate press releases. The procedures described in the Appendix to

this Decision specifically provide for those types of notice. In addition, individual purchasers of Gulf products will, to the extent practicable, be directly notified of the procedures available for filing claims. We understand that many of the direct purchasers of covered products from Gulf and Gulf credit card purchasers during the period in question can be identified through records maintained by Gulf. We intend to request the assistance of Gulf, consistent with the terms of the Consent Order, in connection with notification efforts.

Direct mail notices will also be sent to various trade and consumer organizations, who may then notify their members. We are also considering supplementing the types of notice already discussed by advertising in newspapers and periodicals of general circulation and publishing announcements in trade and consumer publications. Funds will be appropriated for the purpose of providing notice to customers from the refund to be remitted by Gulf.

In addition, Gulf has expressed a willingness to assist the DOE, consistent with the terms of the Consent Order, in the evaluation of refund claims. Its assistance will be useful in verifying information submitted by claimants and in providing additional information or documents within its control to the DOE or individual claimants. We contemplate that Gulf will provide assistance on a voluntary basis, and consequently claimants should seek necessary factual material by applying directly to Gulf. It may even be possible to make refunds directly to some classes of customers by utilizing purchase records maintained by Gulf. This procedure will eliminate the requirement that each purchaser file a refund application. We intend to explore this possibility further when the Consent Order is issued in final form. The Office of Hearings and Appeals will consider the use of compulsory procedures for obtaining information only if voluntary methods for obtaining the information have been unsuccessful. In any case, prior to the issuance of compulsory process Gulf will be afforded an opportunity to present its views regarding the burden that it will experience in complying with individual requests for additional information.

A more fundamental question presented by the large number of potential claimants in this case concerns the processing of individual claims. It would not be feasible as a practical matter for the Office of Hearings and Appeals itself to deal individually with thousands of claims, many of which could be for relatively small amounts. On the other hand, we will not adopt any procedure that effectively pre-

vents small firms or ultimate consumers from presenting legitimate claims for refunds. Consequently, we may establish a procedure under which only certain claims would be considered initially by the Office of Hearings and Appeals. All other claims would be directed to an administrator who is appointed and supervised by the Office of Hearings and Appeals. The administrator would reach a determination as to those claims under the guidance and supervision of the Office of Hearings and Appeals. The procedural rules also provide for the establishment of an appeal procedure for review of these decisions by the Office of Hearings and Appeals.

In the Interim Decision issued in the previous special redress proceeding, a *de minimis* rule was proposed; we agree, however, with the objection made by some of the commenters that such a provision might unnecessarily bar many justifiable small claims. Accordingly, no minimum claims requirement will be imposed at the outset. Instead, the Office of Hearings and Appeals will evaluate the need for a *de minimis* rule after it begins receiving refund claims. A *de minimis* rule will be instituted at that time only to the extent that the size of the claims does not appear to justify consideration in view of the actual direct costs of evaluating and paying the claim.

IV. STANDARDS FOR EVALUATION

A. QUALIFICATION FOR REFUND

Any claim for a refund should logically consist, at a minimum, of proof that the claimant purchased during the period covered by the Consent Order Gulf petroleum products that were subject to FEA price regulations. A consumer will generally be able to establish a claim by making that minimum showing.

Because of the nature of their business activities, however, refiners, resellers and consumers in certain regulated industries will have to make a more substantial showing to establish that they are entitled to a refund. Refiners' and resellers, for instance, might well have had an obligation under the FEA and DOE regulatory program to pass through to their own customers the entire benefit of a decrease in the cost of Gulf products that they sold or refined. The maximum price that a reseller may charge for a covered product is dependent on the cost that it incurs in purchasing that product from its supplier. Similarly, a major component of the maximum prices that a refiner is permitted to charge is the cost of the crude oil that it refines. If a refiner or reseller was already selling a product at its maximum permissible selling price and then received a price reduction from its supplier, the firm would be obligat-

ed to pass that reduction on to its own customers on a dollar-for-dollar basis. Therefore, a refiner or reseller in that position would not have been able to benefit from lower prices of Gulf products, and it should not be eligible to receive a refund.

Consequently, in order to qualify for a refund, a refiner or reseller will be required to demonstrate that during the period covered by the Consent Order it could have kept its prices at the same level if it had experienced a cost reduction equal to the amount of the refund claimed. In order to show this a firm must demonstrate that at the time it purchased covered products from Gulf it had unrecovered product costs at least equal to the amount of the refund claim. In addition, it must have maintained a "bank" of unrecovered costs during relevant subsequent periods. The amount of the refund will be limited to the amount of unrecovered costs available to the claimant for recovery through price increases. The DOE will require that refiners and resellers that do receive a refund reduce their banks of unrecovered product costs for the product or products concerned. In cases where reports were filed with the FEA, they will also be required to submit amended reports that reflect the reduction in their banks. The compilation by the claimant of the necessary cost information should not be unduly burdensome, since under FEA regulations petroleum firms were required to maintain records of this general type. See 10 CFR 210.92. In addition, the DOE intends to scrutinize claims for large refunds carefully on a case-by-case basis. In some of these cases, further evidence may be required of claimants to demonstrate that industry custom, contractual obligations or unusual market factors would not have prevented the firm from retaining the benefits of a cost reduction by Gulf.

A similar showing will be required in the case of firms in regulated industries. Refunds to those firms will be contingent upon showing that they did not pass through the full amount of the Gulf charges to their customers or that they would, if a refund were paid, pass through the benefits of that refund to their customers in an equitable manner. Public utilities, commercial airlines and railroads are included in this category. Municipal and other publicly owned utilities need only verify that their refunds will be used to reduce operating costs or will be applied to the fuel cost calculation in the year the refund is received.

B. DETERMINATION OF REFUND AMOUNT

As stated above, the purpose of the refund procedure is to distribute refunds to Gulf customers only to the

extent that each particular claimant would have benefited if Gulf had followed a transfer pricing practice different from the practice it in fact adopted in the period specified in the Consent Order. Nevertheless, some approximations will be necessary in determining the amount of the refund in each case. Because of the nature of a crude oil cost disallowance it is exceedingly difficult to establish with precision the exact amount by which a particular firm or person might have been overcharged. Presumptions will therefore be necessary to determine the amount of refunds that should be paid to a particular reseller or consumer.

In fact, overcharges made in this case to particular claimants would be virtually impossible to establish. The allegations upon which the Consent Order is based do not *per se* concern a pricing violation, but instead involve crude oil costs that the DOE alleged Gulf improperly utilized in calculating its maximum permissible prices for refined petroleum products and for crude oil sold pursuant to the Mandatory Crude Oil Allocation Program.¹ In general, the price rule applicable to refiners provided that a refiner could not charge a price for an item that exceeded the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, "plus increased product costs incurred between the month of measurement and the month of May 1973 and measured pursuant to the provisions of Section 212.83." 10 CFR 212.82(b)(1) (1974).² Increased product costs, such as increased transfer costs of crude oil, were placed in a pool of costs which could then be utilized by the refiner in the manner specified in Section 212.83. Section 212.83 in general required an equal allocation of those costs to several broad product categories and among classes of purchasers for each product within a category. Each refiner, however, was given considerable discretion with regard to the manner in which it distributed increased costs among products within a single category, and was also permitted in some instances to transfer costs from one category to another. Furthermore, a refiner was not required to recover all increased product costs in the first period in which they were available for recovery under section 212.83, but could instead "bank" some of those costs for recovery in subsequent periods. A refiner was thus permitted to exercise a considerable amount of discretion in deciding when and on which products to pass through costs. The discretion given refiners under the refiner price rule thus makes it extremely difficult to determine with any degree of certainty the maximum price that would have been established

for a Gulf product if the firm had not recognized allegedly improper imported oil costs.

A further problem in determining the precise amount of an overcharge to a particular purchaser of Gulf products arises because many purchasers did not buy those products directly from Gulf, but bought them instead from independent resellers. As discussed above, a reseller may have been required to pass through cost reductions to its customers under the reseller price provisions of the Mandatory Petroleum Price Regulations, or it may have been required to pass through a portion of the reduction. Furthermore, regardless of the requirements of the regulations, a reseller may have voluntarily chosen to pass through all or part of any reduction in its product costs, either to meet the prices charged by competitors, or pursuant to contractual provisions, or simply as a customary practice.

However, while it is unquestionably difficult to determine the exact amount by which any particular purchaser may have been overcharged, it is nevertheless likely that if the allegations made by the DOE in the NOPD were correct, as a class, purchasers of Gulf products paid higher prices than they should have paid and are therefore entitled to refunds. Certain presumptions will therefore be made regarding the manner in which imported crude oil costs were passed through by Gulf and the extent to which customers would have incurred an injury as a result of Gulf's alleged actions.

First, we have presumed that Gulf allocated the entire refund amount to all covered products, including the crude oil, that it sold during the August 19, 1973 through January 31, 1976 period. We have also presumed that these crude oil costs were apportioned equally on a volumetric basis to all covered petroleum products, including crude oil, that Gulf sold during that period. The refund will be apportioned in a similar manner. The data submitted by Gulf indicate that the total volume of covered petroleum products including crude oil sold during the period was 34,505,212,140 gallons. Consequently, the total amount of the refund will be \$0.001224 per gallon (\$42,240,000 ÷ 34,505,212,140 gallons).²

The further presumption has been made that every purchaser of covered products, including crude oil, from Gulf during the period covered by the Consent Order is entitled to the full per gallon refund amount. Essentially this will mean that a governmental entity, a private individual and any other consumer or reseller of a Gulf product may apply for a full refund for the total amount of products that

it purchased during the relevant period. As pointed out in the Interim Decision issued in connection with the special redress proceeding, it is likely that resellers of Gulf products would, as a result of regulatory requirements, market forces, and custom have passed through a portion of a cost reduction to their customers. Furthermore, since resellers in general would also have retained some of the benefits of a cost reduction, it is likely that most consumers would not have received the full benefit of a reduction in the resellers' product costs. No entirely satisfactory method has been devised, however, for allocating the refund among the various distribution levels. To attempt to establish a proper allocation on a case-by-case basis would impose very substantial administrative burdens because of the complex factual presentation and analysis that would be necessary in each case. Fixed allocations of refund amounts such as those proposed in the Interim Decision represent one solution to this problem, but unfortunately sufficient data does not exist on which to base an allocation that accurately reflects actual experience. In addition, fixed allocations may unfairly deprive some customers of refunds to which they may be entitled. Therefore, no reduction will be made in the refunds available to customers in the various levels of distribution unless the total amount of approved claims exceeds the balance of the funds available, in which case a reduction will be made on a pro rata basis of all approved claims.⁴

It is, of course, true that the use of these presumptions will only approximate actual behavior. For the reasons discussed above, however, conclusive findings cannot be made as to the precise amount a particular purchaser may have been overcharged. It is simply not possible to ascertain the precise manner in which Gulf would have determined the prices of its products to a particular purchaser over a two-and-a-half-year period if it had in fact calculated its imported crude oil costs in a different manner. In our view the presumptions that we have adopted represent the most appropriate method of disbursing the refund by Gulf.

V. EXCLUSIVENESS OF THIS ADMINISTRATIVE REMEDY

Under the terms of the Consent Order, Gulf will be deemed to have determined its crude oil costs in accordance with the applicable regulations after it has paid the refund and complied with the other terms and conditions of the Consent Order. Therefore, the procedures set forth in the Appendix to this Decision will be the only administrative remedy available to persons injured as a result of the al-

leged violations by Gulf of the transfer pricing regulations. No further DOE compliance proceeding will be instituted against Gulf with regard to these matters.

The Department intends this claims procedure to be the forum through which Gulf customers may obtain refunds with respect to the matters referred to in the Consent Order. We are aware that a person who has been injured as a result of an overcharge may file a civil action against Gulf in Federal Court under Section 210 of the Economic Stabilization Act of 1970 (ESA), Pub. L. 92-210. However, nothing in the ESA or the special procedural regulations being proposed today prevents an injured person, including a judgment creditor, from fully pursuing in both forums his right to receive compensation. We anticipate that the Federal District Courts will liberally grant stays of proceedings that are instituted under Section 210 of the ESA pending completion of processing of administrative claims filed under the proposed special procedures.

A deadline will be established after which no further applications for refund will be considered. Customers receiving notice by direct mail will have at least 90 days to complete their application after receipt of the notice. It is also our expectation that the entire claims process will, if possible, be completed and refunds made to eligible customers of Gulf within six months of its implementation.

Finally, a number of commenters have noted their interest in filing actions on behalf of classes of Gulf customers. Refund applications filed on behalf of groups of customers will be considered. We will not, however, prejudice the merits of such applications. Instead, applications that are submitted on behalf of a class will be evaluated on a case-by-case basis as received. In general, we will be guided in considering such applications by the requirements applicable to class actions set forth in Rule 23 of the Federal Rules of Civil Procedure.

It is therefore ordered that:

The special refund procedures set forth in the Appendix to this Decision are hereby adopted by the Department of Energy solely for the purpose of achieving an equitable distribution of the refund which has been agreed to by Gulf Oil Corporation and the Special Counsel for Compliance in a Consent Order dated July 26, 1978.

NOTES

1. In particular, the disallowance proceeding concerned the manner in which Gulf established the cost of foreign crude oil purchased from Gulf affiliates. Various aspects of the crude oil transfer pricing program have been discussed in several DOE Freedom of Information Act proceedings. See, e.g., *Kerr-McGee Corporation*; *Standard Oil*

Company (Indiana), 1 DOE Par. 80.155 (1977); *Gulf Oil Corporation*, 1 DOE Par. 80.103 (1977); *Sun Company, Inc.*, 4 FEA Par. 80.573 (1976); *Sun Oil Co.*, 3 FEA Par. 80.528 (1975). The program prescribes the standards that refiners are required to use in establishing the cost of imported crude oil purchased in transactions between affiliated entities and the standards that the DOE will use to disallow or to reallocate landed costs pursuant to 10 CFR 212.83(b).

2. 39 Fed. Reg. 42,368 (1974). Prior to January 15, 1974, the refiner price rule was set forth in 6 CFR 150.355(b), and prior to November 1, 1973 in 6 CFR 150.358(a).

3. The stated quantity does not include either the petroleum products produced by Gulf during that period and retained for its own use or exempt products sold by Gulf. In the Interim Decision issued in connection with the Special Redress Petition, exempt petroleum products and products consumed internally were included in the total amount of petroleum products over which the refund was allocated. That method of allocation was consistent with the manner in which the refiner price regulations required firms to allocate increased product costs. See 10 CFR 212.83. Nevertheless, the DOE is cognizant of the fact that the total amount of increased product costs cited in the NOPD issued to Gulf significantly exceeded the amount of the settlement. Therefore, consistent with the ultimate objective of the claims procedure, i.e. to compensate Gulf customers for actual injuries that they may have incurred, no allocation of the refund will be made in this case to exempt or internally consumed products. We will, on the other hand, include certain sales of crude oil by Gulf because Gulf's interaffiliate crude oil costs were included in computing the maximum prices utilized in these transactions. See 10 CFR 212.65; 10 CFR 212.183.

Some individuals who filed comments on the procedures proposed in the special redress proceeding, while stating their agreement in principle with the type of allocation of the Gulf refund that was proposed in the Interim Decision, expressed the view that flexibility should be exercised in exceptional cases. It is the intention of the Office of Hearings and Appeals to review, to the extent possible, claims by an applicant that because of the unusual circumstances under which it purchased covered products from Gulf, strict application of the standards for evaluation would be inequitable.

4. In view of this possibility, we intend to delay paying any refunds until all claims have been processed.

APPENDIX—SPECIAL REFUND PROCEDURES

1. ESCROW ACCOUNT

The Department of Energy shall issue an order to Gulf Oil Corporation providing for the temporary disposition of the funds to be tendered pursuant to the Consent Order that the Special Counsel for Compliance of the Department of Energy entered into with Gulf Oil Corporation on July 26, 1978. Gulf may be required under the terms of the order to place the funds in an appropriate interest-bearing escrow account or to retain the funds itself in a segregated account under such terms and conditions as are speci-

fied by the DOE. Funds contained in the escrow account or the segregated account maintained by Gulf shall be disbursed only upon receipt of an order signed by the Director of the Office of Hearings and Appeals or his designee.

2. NOTICE

The Office of Hearings and Appeals shall publish an appropriate notice describing the procedures that shall be available to persons who wish to obtain a refund based on the Consent Order. A notice of this type shall be published in the FEDERAL REGISTER and in such other manner as the Office of Hearings and Appeals deems necessary or desirable. Other methods of publication may include press releases, advertisements in major newspapers and trade journals, and direct mailings to Gulf customers and to trade and consumer organizations.

3. APPLICATION FOR REFUND; FILING

Except as otherwise provided by an order of the Office of Hearings and Appeals, any person who believes that he is entitled to a refund as a direct result of the pricing practices upon which the Consent Order was based may file an application for refund with the Office of Hearings and Appeals of the Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461, or at such other address as the Office of Hearings and Appeals may specify. All applications must be signed by the applicant and should be labeled "Application for Refund—Gulf Oil Corporation Consent Order."

Applications for refunds in excess of \$100 must be filed in duplicate, and these applications will be available for public inspection in the DOE Public Docket Room at 2000 M Street, N.W., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted. A statement must also be provided specifying why any such information is privileged or confidential.

4. FILING DEADLINE

An application for refund must be filed on or before the date that the Office of Hearings and Appeals specifies in the notices issued pursuant to Section 2. The filing deadline shall not be less than 90 days from the date of publication of the notice in the FEDERAL REGISTER. The Office of Hearings and Appeals may grant extensions of time, for good cause shown, of the deadline. Requests for extension must be in writing and submitted prior to the deadline.

5. CONTENTS OF APPLICATION

An application shall contain the following information:

(a) The name, address and telephone number of the applicant;

(b) A complete statement of the basis for the claim (including the applicant's Gulf account number and other identifying information);

(c) The total quantity of covered petroleum products purchased from Gulf or from a reseller of Gulf products during the period August 19, 1973 through January 31, 1976;

(d) With respect to each type of product, the quantities and periods of time during which the purchases were made;

(e) Copies of all receipts, invoices, contracts, agreements, instruments or other documents necessary to establish the validity of the claim, including documents necessary to prove the quantities of covered Gulf petroleum products purchased during the period August 19, 1973 through January 31, 1976;

(f) A statement of whether the applicant has ever filed with the Department of Energy any other application for refund involving Gulf products and whether he is currently or has ever been a party in any court proceeding involving alleged crude oil pricing violations by Gulf; and

(g) A sworn statement by the applicant that all statements made in the application are true and correct to the best of his knowledge and the belief.

In the alternative, an application may be filed by completing an appropriate form provided by the Department of Energy.

6. CRITERIA FOR EVALUATION

(a) An application for refund may be granted if an applicant has persuasively demonstrated (i) that it purchased covered Gulf petroleum products during the period August 19, 1973 through January 31, 1976 and (ii) if the applicant is a reseller or a wholesale purchaser whose prices are subject to regulation by a governmental unit, that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. A public utility may satisfy the requirement set forth in subsection (a)(ii) by demonstrating that the benefit of any refund will be passed on to its customers in an equitable manner.

(b) The amount of the refund to which a purchaser of Gulf products is entitled shall generally be determined by multiplying the volume in gallons of covered Gulf petroleum products purchased by \$0.00122.

7. PROCESSING OF APPLICATION

(a) The Office of Hearings and Appeals or its designee may initiate an investigation of any statement made in an application and may require verification of any document submitted in support of a claim. The Office of Hearings and Appeals or its designee may solicit and accept submissions from interested persons, including Gulf Oil Corporation and the Office of Special Counsel for Compliance, relevant to any application. In evaluating an application, the Office of Hearings and Appeals or its designee may consider information obtained from any other source and may on its own initiative convene a hearing or conference if, in its discretion, it decides that a hearing or conference will advance its evaluation of an application.

(b) The Director of the Office of Hearings and Appeals or his designee shall conduct any hearing or conference that is convened with respect to an application for refund and will specify the time and place for the hearing or conference and notify the applicant. The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing, and otherwise regulate the course of the hearing.

8. DECISION OF THE DEPARTMENT OF ENERGY

Upon consideration of the application and other relevant information received or obtained during the course of the proceeding, the Director of the Office of Hearings and Appeals or his designee shall issue an order granting or denying the application. The order shall contain a concise statement of the relevant facts and the legal basis for the decision. A copy of the order, with such modification as is necessary to ensure the confidentiality of information protected from public disclosure by 18 U.S.C. 1905, shall be served upon the applicant and any person who participated in the proceeding.

9. EFFECT OF FAILURE TO FILE TIMELY APPLICATION FOR REFUND

Any application not filed on a timely basis may be summarily dismissed, and the applicant shall not be entitled to any portion of the funds submitted pursuant to the Consent Order.

10. PARTICIPATION BY GULF OIL CORPORATION

Gulf will assist in the evaluation of applications for refund to the extent contemplated by the Consent Order, including submitting any documents or information that the Office of Hearings and Appeals or its designee

determines is relevant to its evaluation of a claim. An applicant who has unsuccessfully requested information or documents from Gulf may submit to the Office of Hearings and Appeals a request that information or documents believed to be in the possession of Gulf Oil Corporation and necessary to the evaluation of his claim be furnished either to the Office of Hearings and Appeals or to the applicant. Gulf will be given an opportunity to comment on the request. After considering the request and the comments of Gulf, the Office of Hearings and Appeals or its designee may issue an order granting the request if it determines that the requester seeks relevant and material evidence and that compliance with the request will not impose an unreasonable burden on Gulf. The Director of the Office of Hearings and Appeals or his designee may in an appropriate case order that Gulf be reimbursed from funds in the escrow account for the actual expenses incurred by Gulf in complying with the provisions of this section.

11. LIMITATIONS

The aggregate amount of all refunds authorized by the Office of Hearings and Appeals shall not exceed the amount to be remitted pursuant to the Consent Order by Gulf Oil Corporation, plus interest accrued in the escrow account, reduced by any administrative costs authorized by the Office of Hearings and Appeals. In the event that the aggregate amount of the claims filed exceeds the amount remitted by Gulf, the Office of Hearings and Appeals may award refunds to applicants on a pro rata basis. The Office of Hearings and Appeals may delay payment of any refunds until all applications have been processed.

12. INTERIM AND ANCILLARY ORDERS

The Director of the Office of Hearings and Appeals or his designee may issue any interim or ancillary orders, or make any rulings or determinations necessary to ensure that the refund proceedings, including the operations of any administrator or escrow agent appointed in connection with these proceedings, are conducted in an appropriate manner and are not unduly delayed.

13. REMAINING FUNDS

Any funds, including any accumulated interest, remaining in the escrow account after the disposition of all timely applications for refund and approved expenses of administering the refunds shall be remitted to the United States pursuant to the Consent Order. The Director of the Office of Hearings and Appeals shall issue an order to the escrow agent directing

him to disburse the funds in this manner.

[FR Doc. 79-8281 Filed 3-16-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

ACTIVATION ORDER UPDATING MOTOR GASOLINE ALLOCATION BASE PERIOD

Guidelines and Request for Comments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Guidelines and Request for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing guidelines to its recent order which activated certain provisions of the Standby Petroleum Product Allocation Regulations. The Activation Order updated, for the months March, April and May 1979, the base period for motor gasoline to the period July 1, 1977 through June 30, 1978. These guidelines are intended to facilitate the distribution of available supplies of gasoline by resolving some of the uncertainties associated with the Activation Order.

DATES: Effective Date: Immediately. Written comments to be submitted by April 21, 1979. Hearing date: March 21, 1979, 9:30 a.m. Requests to speak as soon as practicable before the hearing.

ADDRESSES: Hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C. All comments and requests to speak and statements to: Public Hearing Management, Standby Regulation Activation Order No. 1 and Guidelines, Economic regulatory Administration, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert G. Gillette (Comment Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B Washington, D.C. 20461 (202) 254-3345.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

William Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2304, Washington, D.C. 20461 (202) 254-8034.

Michael Paige or Joel M. Yudson (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585, (202) 252-6744.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements
 - A. Section 501 of DOE Act
 - B. Section 404 of DOE Act
 - C. Section 553(d) of the Administrative Procedure Act
- III. Guidelines Adopted
- IV. Written Comment and Public Hearing Procedures

I. BACKGROUND

We are today issuing the guidelines appended to this notice which provide guidance to the public on the implementation of ERA's February 22, 1979 order activating a portion of the Standby Petroleum Product Allocation Regulations (Activation Order No. 1, 44 FR 11202, February 28, 1979). The February 22 action activated, effective March 1, 1979 for the initial period of March, April and May 1979, only that portion of ERA's Standby Petroleum Product Allocation Regulations (44 FR 3928, January 18, 1979) relating to gasoline allocation base periods. It allows firms to purchase a volume of motor gasoline based on the amount they purchased in the corresponding month of the period July 1, 1977 through June 30, 1978 rather than the corresponding month in 1972 as previously provided under 10 CFR Part 211. The guidelines issued today are effective immediately, will remain in effect for the initial three months that the Activation Order will be in effect and will be extended after public comment if the Activation Order is extended.

The Activation Order did not expressly relate the updated base period to the various assignment orders, termination orders, adjustment orders and other actions taken by the DOE and its predecessor, the Federal Energy Administration (FEA), since the 1972 base period. Since the issuance of the Activation Order, ERA has received many requests for guidance as to how the terms of the Activation Order are to be applied. In this connection, firms have been reluctant to distribute gasoline to certain purchasers in the absence of a statement by DOE of the effects of the Activation Order. DOE's Office of Hearings and Appeals has also received from a great number of firms receiving inadequate volumes of gasoline requests for exception from and stay of the provisions of the Activation Order.

The discussion of the current tight gasoline supply and marketing environment contained in the notice announcing the Activation Order remains valid and is incorporated herein by reference. In addition, as a result of the period selected to be the new base period, many gasoline marketers that entered business during or after the new base period, and who thus have

no actual gasoline purchases during a portion or all of the new base period, are experiencing supply problems. Some of these firms received assignment orders during or after the new base period and others relied exclusively on the purchase of surplus product. Because the Activation Order did not deal explicitly with how these firms are to be treated, and because other unique supply arrangements were also not addressed, suppliers have been unsure as to the precise extent of their new supply obligations. Many refiners have declared allocation-fractions of 1.0 or less and surplus motor gasoline has not generally been available. Accordingly, many firms are receiving limited amounts of motor gasoline and, in some instances, none at all. We are therefore making these guidelines effective immediately to dispel the uncertainty and confusion that has arisen surrounding the Activation Order and to facilitate the orderly flow of gasoline supplies.

II. PROCEDURAL REQUIREMENTS

In the notice announcing the Activation Order, we stated our belief that an order activating all or a portion of the standby regulations is not an order having the general applicability of a rule within the meaning of section 501 of the Department of Energy Organization Act (Pub. L. 95-91, "DOE Act"), because the regulatory activation provisions themselves are contained in the already-adopted standby regulations. We nevertheless determined that we would follow the procedures of section 501 in that and future activation orders in order to assure maximum public participation in such proceedings. These guidelines are intended only to provide guidance in implementing the Activation Order and, we believe, are therefore also not an order having the general applicability of a rule under section 501. However, for the same reasons expressed in the Activation Order, we will also follow the procedures of section 501 in adopting these guidelines.

A. SECTION 501 OF THE DOE ACT

Under section 501(e) of the DOE Act, we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance. As was stated in the notice announcing the Activation Order, immediate adoption of an updated base period is necessary to reduce the dislocations and competitive imbalances which would likely have been caused by continued use of the 1972 base period. These guidelines

to the Activation Order are necessary to assure that the Activation Order is implemented as smoothly and equitably as possible. In addition, as stated earlier, immediate effectiveness of these guidelines is required to prevent the harm which many gasoline marketers could experience unless gasoline is made quickly available to them. In accordance with section 501, we will receive both oral and written comments on this action as soon as practicable after the guidelines are issued.

B. SECTION 404 OF THE DOE ACT

Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1), (b) and (c)(1) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Although these guidelines are not a general statement of policy, we have nevertheless notified the FERC of them. The FERC has notified us that it has declined to determine that these guidelines may significantly affect one of its functions under the sections noted above.

C. SECTION 553 OF THE ADMINISTRATIVE PROCEDURE ACT

Section 553(d) of the Administrative Procedure Act requires that a substantive rule will not become effective less than thirty days after its publication. Interpretive rules and statements of policy are exempt from this requirement. This requirement will also not be applicable if an agency finds good cause to waive this requirement and publishes this finding together with the rule.

Since these guidelines primarily explain, clarify and facilitate the implementation of the provisions of the Activation Order, we believe the thirty day requirement does not apply. Even if it were applicable, however, the need for immediate guidance on the implementation of the Activation Order provides good cause to waive the section 553(d) requirement.

III. GUIDELINES ADOPTED

The guidelines adopted consist of a number of implementing principles related to the Activation Order and a series of examples illustrating these principles. The principles relate primarily to the effect of DOE or FEA orders on supply obligations and allocation entitlements. They set forth

what base period volumes should be and who the base period supplier will be for firms without actual purchases during the new base period months and whether interim supply arrangements can be certified up to a supplier's supplier to become part of the latter's supply obligation. They also describe certain situations in which ERA Regional Offices will act on applications for assignment or recalculation of base-period volumes. In addition they furnish some guidance as to what was meant in the Activation Order by the term "temporary exigent circumstances." In the interest of brevity, the principles themselves are not repeated in this preamble and you may read them in the guidelines.

To permit orderly implementation of the Activation Order in accordance with these guidelines, the notifications required under the Activation Order to be provided by suppliers by March 15, 1979 to wholesale purchasers under 10 CFR 211.12(c), and to ERA under 10 CFR 211.12(e)(2), will not be considered late if submitted before March 26, 1979.

If you believe the guidelines are unsatisfactory or do not adequately resolve your questions concerning the updated base period, we solicit your comments either orally at the March 21, 1979 hearing on the Activation Order or in writing by April 21, 1979. We specifically request comments as to whether a mechanism should be provided to enable purchasers with unusually low purchases in one or more months of the base period, as in a case, for example, where the volume of such purchases was at least 25% less than the average monthly purchases for the rest of the base period, to receive an upward adjustment to its base-period volume for such months to reflect its actual average monthly purchases.

IV. WRITTEN COMMENT AND PUBLIC HEARING PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the matters contained in the guidelines. Comments should be submitted by 4:30 p.m., e.s.t., April 21, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the designation: "Standby Regulation Activation Order No. 1 and Guidelines." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and

to treat it according to our determination.

B. PUBLIC HEARING

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in the guidelines, or represent a group or class of persons that has an interest and you have not already made a request to speak at the March 21, 1979 hearing on the Activation Order, you may, as soon as practicable before the hearing, make a written or telegraphic request for an opportunity to make oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified as soon as possible so that appropriate arrangements can be made. You will be required, if time permits, to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this notice before 4:30 p.m., e.s.t., March 20, 1979.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., on the day before the hearing. If you wish to have a question asked at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made

available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue SW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

Issued in Washington, D.C., March 14, 1979.

HAZEL R. ROLLINS,
Deputy Administrator,
Economic Regulatory Administration.

APPENDIX

GUIDELINES FOR DETERMINATION OF BASE-PERIOD VOLUMES AND SUPPLIERS FOR MOTOR GASOLINE UNDER ACTIVATION ORDER NO. 1 UNDER SPECIAL RULE NO. 1 IN APPENDIX TO 10 CFR PART 211

I. Applicability.

These guidelines are effective for the period March 1, 1979 through May 31, 1979 and will be extended if Activation Order No. 1 of the Standby Petroleum Product Allocation Regulations is extended. They apply at all levels of distribution to the operations of any firm related to the refining, distribution or consumption of motor gasoline.

II. Implementing Provisions.

1. Where a firm made any actual purchases (including purchases from 1972 base-period suppliers, assigned suppliers, or purchases of surplus product) during the corresponding month of the July 1, 1977-June 30, 1978 base period, such purchases are that purchaser's base-period volume for the current month and the actual suppliers of those volumes during the corresponding month of the July 1, 1977-June 30, 1978 base period shall be the new base-period suppliers. (See the exceptions for reassignments in Paragraph No. 3 below and for branded independent marketers in Paragraph No. 8 below.)

2. Where a firm made no purchases from any supplier during the corresponding month of the base period:

a. If the purchaser was never assigned a base-period supplier, suppliers and purchasers will attempt to agree mutually to base-period relationships for such months, which may not become effective unless an ERA regional office, upon application, issues an assignment order. In the interim pending an assignment, suppliers may supply agreed-upon volumes which are consistent with the assignment procedures below. (See Paragraph No. 7 as to upward certification.)

For those months in which there were no purchases in the base period, ERA will assign monthly base-period volumes which do not exceed the vol-

umes calculated by totaling the actual purchases for those base-period months in which there were purchases and 97% of the actual purchases in the succeeding months after the base period, divided by the total number of months of actual purchases. The months after the base period that will be used for averaging will only include those months necessary to extend the averaging period to twelve months (but will not include any month subsequent to February 1979). Ninety-seven percent is a deflating factor to account for the national average growth in gasoline demand from the end of the base period to March 1, 1979.

As to firms which began business after December 1, 1978, because of their short time in business, an evaluation will be done by the ERA region of the base-period volume of comparable firms in the same area before an assignment of a base-period volume is made. Such evaluation and assignment shall be made pursuant to the "Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets".

b. If a new assignment order was issued during or after the 1977-78 base period and the purchaser had no base-period supplier before receiving the assignment, for months prior to effectiveness of the assignment in which there were no purchases, assigned base-period volumes will be the new base-period volumes and the assigned supplier will be the new base-period supplier. (For those months of the base period after effectiveness of the assignment or where there were actual purchases, as set forth in paragraph No. 1, actual purchases and suppliers will determine base period volumes and suppliers regardless of an assignment order.)

The purchaser may also apply to the ERA Regional Office to recalculate its base-period volume for base-period months without purchases to reflect the purchaser's actual experience since the months in which no purchases were made. A reclassification will follow the procedures set forth in paragraph 2a above. Pending a recalculation by the Regional Office, in the interim a supplier may supply such estimated volumes and the supplier may upward certify such volumes to its supplier which will then include such volumes in its base period supply obligations on an interim basis.

3. For purchasers to whom assignment orders were issued during or after the base period which terminated one supply obligation and established another (i.e. reassignments, including three-party agreements):

a. For the current months corresponding to base period months prior to the effective date of the assignment

order, the newly assigned supplier will be the base-period supplier. Its supply obligation as a result of the reassignment will equal the volumes reassigned, or the actual purchases during the corresponding month of the base period from the supplier whose obligations were terminated, whichever is less. If actual base-period purchases from the supplier whose obligations were terminated exceeded the volumes reassigned, the original base period supplier shall be the base-period supplier for the difference. Any other actual suppliers, whether they supplied before or after effectiveness of the assignment order, shall also be base period suppliers for the actual volumes supplied. However, the newly-assigned supplier, if it is willing, may, if an application is made to the ERA regional office for an assignment, supply on an interim basis the difference between the assigned volumes and the actual purchases from the supplier whose obligations were terminated for the portion of the base period prior to effectiveness of the assignment, pending ERA action on the assignment application, and may upward certify such volumes to its supplier which will include such volumes as part of its supply obligations pending ERA action.

b. For those base-period months after the reassignment order was issued, actual purchases and actual suppliers will determine base-period volumes and supply obligations.

4. An ERA Regional Office may redirect product or make a temporary assignment to enable a purchaser to obtain in any month up to 75 percent of its base-period volume for that month.

5. "Temporary \ exigent circumstances" includes but is not limited to: Facility shutdowns, including either the purchaser's facility or the supplier's facility;

Limited access to facility;

Supplier's inability to deliver (a supplier's declaration of an allocation fraction less than one (1.0) will not, by itself, be an adequate demonstration of a supplier's inability to deliver);

Reduced capability of purchaser to function as normal business, including financial difficulties impacting volume, but does not include an unwillingness of purchaser to purchase because of a lawful price.

NOTE—If a purchaser believes that its supplier's price during the base period was unlawful, it should file a complaint with the DOE's Office of Enforcement or Office of Special Counsel, as appropriate. If the DOE in an enforcement action has determined that a purchaser was unwilling to purchase product because of a price set in violation of the price regulations, the activation of the standby regulations will not affect any enforcement action or any remedy thereunder.

If the purchaser has experienced a temporary exigent circumstance for a month during the base period causing at least a ten percent reduction in its normal purchases for that month, its base-period volume may be revised to equal those volumes purchased in the corresponding month in the period July 1976 through June 1977. Its base-period supplier for the previous period's volumes will be the supplier from whom the purchases were reduced because of the exigency. The purchaser should notify the supplier and if the supplier is willing to provide the additional volumes, no assignment by the ERA Regional Office is required. However, if the supplier is a major refiner subject to the jurisdiction of DOE's Office of Special Counsel, then pre-notification of the temporary exigent circumstance and the use of corresponding months of the July 1976 through June 1977 period should be provided to the DOE audit team assigned to that refiner. If the supplier is not willing to supply the prior period's volumes, request for assignment should be made to the ERA Regional Office. The use by a purchaser of the previous year's volume as its base period volume does not cause the purchaser's own supply obligations to be those of the previous period.

6. The supply obligations of a wholesale purchaser-reseller under the activation order are included in the base period use of the wholesale purchaser-reseller and need not be certified to its supplier to be so included.

7. If,

a. A wholesale purchaser-reseller has accepted and is supplying proposed base period volumes to a purchaser that does not have base period volumes for any base period months;

b. The purchaser applies to ERA for an assignment for those months; and

c. The proposed base period volumes are not in excess of those volumes that will be assigned by ERA under the procedures of Paragraph 2a of these guidelines; then the wholesale purchaser-reseller may, on an interim basis, include such volumes in its base-period use and may upward certify such volumes to its supplier. The wholesale purchaser-reseller's supplier shall include such volumes as part of its base-period supply obligations in the interim pending an ERA assignment.

8. Any wholesale purchaser-reseller of motor gasoline which is a branded independent marketer and which during the base period had a base period supplier different from the firm that was the supplier on February 28, 1979 under whose brand it was selling on that date and which has not received an ERA assignment designating its February 28, 1979 supplier as its base period supplier, may apply to

ERA to have designated as its base period supplier that supplier which was its supplier on February 28, 1979. If the firm that supplied the purchaser on February 28, 1979 is willing to become the purchaser's base-period supplier and the purchaser or its supplier has applied to ERA for such a reassignment, pending ERA action the supplier may be temporarily so designated and may supply those volumes on an interim basis and certify upward such volumes to its supplier. The supplier's supplier will include volumes certified as part of its supply obligations on an interim basis pending action on the application for assignment.

A wholesale purchaser-reseller which is receiving its base period volume from a firm supplying gasoline pursuant to this paragraph shall provide, by April 15, 1979, written notice that it is receiving product from its February 28, 1979 supplier to any supplier(s) which supplied the wholesale-purchaser reseller during the base

period. Such wholesale purchaser-reseller shall also provide written notice to the February 28, 1979 supplier of the amount of the wholesale purchaser-reseller's base period use which had been supplied by other suppliers during the base period and which is to be supplied by the designated supplier. The notice to the designated supplier shall include the names and addresses of the actual suppliers during the base period and of the wholesale purchaser-reseller and the location of any facility, including any retail sales outlet concerned.

III. EXAMPLES

Example 1: Firm A began operation in April of 1978, did not receive an assignment from ERA and has purchased gasoline as follows: April-June 1978: 10,000 gallons per month (gal./mo.). July 1978-February 1979, 12,000 gal./mo. Its base-period volumes (BPV) that ERA may assign for the months July through March will be determined as follows:

$$\begin{aligned} \text{BPV} &= \frac{(10,000 \times 3 \text{ mos.}) + (12,000 \times .97 \times 8 \text{ mos.})}{11 \text{ mos.}} \\ &= \frac{30,000 + 93,120}{11} \\ &= 11,193 \text{ gallons for months of July through March} \end{aligned}$$

Example 2: Firm B began operation in November 1978, and purchased 75,000 gallons monthly from Novem-

ber 1978 through February 1979. To calculate his base-period volume, he calculates:

$$\frac{75,000 \times .97 \times 4 \text{ mos.}}{4 \text{ mos.}} = \frac{291,000}{4} = 72,750 \text{ gallons}$$

Therefore, his base-period volume can be an amount up to 72,750 gallons for each month of the base period, i.e. 97 percent of its monthly purchases. It will attempt to agree mutually with a supplier to provide such volumes and will apply to the ERA Regional Office for an assignment. Pending an assignment, a supplier may supply Firm B 72,750 gal./mo. and certify upward such volumes to its supplier. Had Firm B begun operation in December 1978 or later, the ERA Regional Office will conduct a comparability study to determine the appropriate base period volume.

Example 3: Firm C began business on January 1, 1978 and purchased

8,000 gal./mo. of surplus from Firm X, an unassigned supplier, during the months of January and February of 1978, and 11,000 gallons from Firm X during March 1978. Firm C received a ERA assignment order effective April 1, 1978 assigning it a base period volume of 6,000 gal./mo. for each month of the base period year and assigning Firm Y as its base-period supplier. In April 1978, Firm C purchased 8,000 gallons from Firm X and 1,000 gallons from Firm Y. In May and June 1978, Firm C purchased 9,000 gal./mo. from Firm Y. From July 1978 through February 1979, Firm C purchased 10,000 gal./mo. from Firm Y. Firm C determines its base period volume as follows:

Its base period volumes for the months of April, May and June is 9,000 gal./mo. Its base period supplier for the months of May and June is Firm Y. Its base period suppliers for the month of April are Firm X (for 8,000 gallons) and Firm Y (for 1,000 gallons). The base period relationships in April, May and June are all derived from actual transactions.

For the months of January, February and March, its base period volumes are 8,000 gallons, 8,000 gallons and 11,000 gallons, respectively, and its base period supplier is Firm X. Thus, regardless of the existence of an assignment order, actual purchases determine base period volumes and suppliers.

For the months of July through December, the months of the base period in which it had no actual purchases, Firm C's base-period volume is 6,000 gallons per month, its previously assigned base period use and its base-period supplier is Firm Y, its assigned supplier. Firm C may apply to the ERA Regional Office for a recalculation of its base-period volume for July through December which may be determined as follows:

$$\begin{aligned} \text{BPV} &= \frac{1}{12 \text{ mos.}} (8,000 \text{ gal.} \times 2 \text{ mos.} + 11,000 \text{ gal.} \times 1 \text{ mo.} \\ &\quad + 9,000 \text{ gal.} \times 3 \text{ mos.} + 10,000 \text{ gal.} \times .97 \times 6 \text{ mos.}) \\ \text{BPV} &= 9,350 \text{ gallons} \end{aligned}$$

Firm C may mutually agree with Firm Y to supply it with 9,350 gal./mo. for July through December. In the interim, prior to a ERA approval of the recalculated base period volume, Firm Y may supply Firm C such volumes and may certify upward such volumes to its supplier.

Example 4: Firm D purchased 15,000 gal./mo. from Firm X, its 1972 base-period supplier, in the months of July through December 1977 and 10,000 gallons per month from Firm X in January through June 1978. Firm D also purchased 5,000 gallons from Firm Y in the months of December 1977 and January 1978 and 5,000 gallons per month from Firm Z in the period July 1977 through November 1978. In November 1978, a three-party agreement was entered into and orders were issued by ERA that terminated Firm X's 12,500 gallons per month 1972 base-period obligation to Firm D

and assigned Firm Y as Firm D's base-period supplier for that volume.

Firm D's base-period volumes and base-period suppliers are determined as follows:

For the months July through November, Firm D's base-period volume is 20,000 gal./mo., its actual purchases.

Firm Y is its base-period supplier for 12,500 gal./mo., which represents the volumes supplied by Firm X that Firm Y agreed to assume. Firm X is its base-period supplier for 2,500 gal./mo., the difference between the volumes actually supplied and the volumes for which its obligations were terminated. Firm Z is its base-period supplier for 5,000 gal./mo., actual volumes supplied by a supplier not part of the three-party agreement.

For the month of December, Firm D's base-period volume is 20,000 gal. Its base-period suppliers are Firm X for 2,500 gal. and Firm Y for 17,500 gal. Firm Y has a supply obligation for the volumes it supplied in addition to the reassigned volumes Firm X supplied in the base period.

For the month of January, Firm D's base-period volume is 15,000 gallons. Its base-period supplier is Firm Y for 15,000 gallons, which is the actual volumes supplied by Firm X and the volume supplied by Firm Y in January 1978.

For the months February through June, Firm D's base-period volume is

$$\begin{aligned} \text{BPV} &= \frac{(.97)(10,000 \text{ gal.} \times 1 \text{ mo.} + 12,000 \text{ gal.} \times 4 \text{ mos.})}{6 \text{ mos.}} \\ &\quad + 14,000 \text{ gal.} \times 1 \text{ mo.}) \\ &= 11,640 \text{ gallons.} \end{aligned}$$

The ERA Regional Office will assign Firm Y as Firm E's base period supplier for the recalculated base period volume. Prior to a recalculation by the ERA Regional Office, Firm Y, in the interim, may supply Firm E 11,640 gallons per month, and may upward certify such volumes to its supplier.

Example 6: In June 1977, Firms F and I each purchased 10,000 gallons from Firm X and Firm G purchased 10,000 gallons from Firm Y. Firms F and G and I purchased 10,000 gallons per month from Firm X in the months July 1977 through May 1978. In June 1978, Firm X experienced a refinery fire. Because of the fire, Firm X supplied no gasoline to Firms F and I during June 1978 and only 5,000 gallons to Firm G. Firm F purchased 10,000 gallons from Firm Y during June 1978; Firm G, during June 1978,

10,000 gal./mo. Its base-period supplier is Firm Y for 10,000 gal./mo., the actual volumes supplied by Firm X in the base period.

Firm Y may further agree with Firm X that Firm X's 2,500 gal./mo. base-period obligation for the months July through December will be assumed by Firm Y on an interim basis pending an assignment by the ERA Regional Office to such effect. Firm Y's supplier will be an aggrieved person in such a reassignment proceeding and will be required to supply the additional volumes assumed by Firm Y on an interim basis pending ERA action.

Example 5. Firm E began business in September 1978 and purchased 10,000 gallons from Firm X in that month. It received an assignment order effective October 1, 1978 assigning Firm Y as its base period supplier for 8,000 gallons for each month. From October 1978 through February 1979, Firm E purchased 12,000 gal./mo. from Firm Y and in February 1979 also purchased 2,000 gallons from Firm Z.

Because Firm E made no purchases in the base period and received an assignment order, Firm E's base period volume is 8,000 gal./mo., its assigned base period volume, and its base period supplier is Firm Y, its assigned supplier. Upon application, the ERA Regional Office will approve a recalculation of the monthly base period volume for Firm E in the amount of 11,640 gallons determined as follows:

though Firm Y supplied Firm G product in June 1977, it is not Firm G's base period supplier for the month of June, because the exigency as to Firm X reduced Firm G's purchases from Firm X.

Firm I's base period volume is 5,000 gallons and its base period supplier is Firm Y. Firm I may notify Firm X, that because of Firm X's fire, Firm I's base period volume is 10,000 gallons, its June 1977 purchases, and that Firm X should be its base period supplier. If there had been no fire, Firm I would not have purchased any product from Firm Y during June 1978. If Firm I notifies Firm X of the use of the earlier period, it is also required to notify Firm Y. Firm Y, in its turn, then could not include volumes supplied to Firm I as part of its own base period use for that month.

Disputes over temporary exigent circumstances will be resolved by the appropriate ERA Regional Office.

[FR Doc. 79-8243 Filed 3-15-79; 8:45 am]

[6560-01-M]

[FRL 1078-41]

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Availability

AGENCY: Office of Federal Activities, Environmental Protection Agency.

PURPOSE: This notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9)

PERIOD COVERED: This notice includes EIS's filed during the week of March 5 to March 9, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from March 16, 1979 and will end on April 30, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Federal Activities, EPA for further information.

BACK COPIES OF EIS's: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT:

Kathi Weaver Wilson, Office of Federal Activities, A-104, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of March 5 to March 9, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the FEDERAL REGISTER and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: March 14, 1979.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

APPENDIX I—EIS's FILED WITH EPA DURING THE WEEK OF MARCH 5 TO 9, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality activities, U.S. De-

partment of Agriculture, Room 412A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Final

Kootenai N.F., Keeler Planning Unit, Lincoln County, Idaho, and Bonner County, Mont. March 8: Proposed if the implementation of the Revised Multiple Use Plan for the Keeler Planning Unit, Troy Ranger District, Kootenai National Forest located in Lincoln County, Montana and Bonner County, Idaho. The proposed Management plan affects about 46,887 acres of National Forest Land which has been stratified into twelve management situations. Alternatives include: greater emphasis on economic development through more intensive use of the renewable natural resources; and emphasis on environmental quality and retention of natural qualities, including recommendations for wilderness proposals. (USDA-FS-FES-ADM)-R1-78-R6). Comments made by: DOI, EPA, USDA, State agencies, groups, individuals and businesses. (EIS Order No. 90253.)

Tonasket Planning Unit, Land Management Plan, Okanogan NF, Okanogan and Ferry Counties Wash. March 7: The Tonasket Planning Unit includes about 226,600 acres of national forest lands lying in Okanogan and Ferry Counties, Washington. Okanogan National Forest Lands, lying in Okanogan County, total 222,075 acres. Colville National Forest lands in Ferry County make up the remaining 4,525 acres. Through a land management planning process, the Forest Service divided the planning unit into areas with different management objectives. The overall objective of the Land Management Plan is to provide for the best use of land in relation to the needs and wants of the public and the capabilities and limitations of the land. (USDA-FS-R6-FES(ADM) 78-8). (EIS Order No. 90251.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attention: Daen-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202-693-8795.

Draft

Harbor of Refuge, Apra Harbor, Guam, March 5: Proposed is a harbor of refuge for Apra Harbor in the Territory of Guam. Objectives of the plan are: 1) safety for small boats under typhoon and tropical storm conditions. 2) to minimize land use and recreational development conflicts. 3) protection of marine biological resources and water quality/circulation, and 4) to eliminate impacts on archeological and historical resources. Each of the four alternatives are located in the Piti channel of the Apra Harbor and involve different sizes of the entrance channel and boat basin, and the amount of material that will have to be dredged. (Honolulu District). (EIS Order No. 90244.)

Final

Umpqua River and Bar, Jetty Extension, Douglas County, Oreg., March 7: Proposed is the construction of a 2,600-foot seaward extension of the existing training jetty on tangent to connect with the existing south jetty about 1,000 feet landward of the terminal end. Top elevation of the structure

would be 14 feet from mllw except for the oceanward 800 feet which will be constructed to elevation +18 feet mllw. The structure would measure 17 feet across at the top and would consist of 611,000 tons of quarried stone. This project is located in Douglas County, Oregon on the Umpqua river. (Portland District). Comments made by: AHP, DOI, DOC, USDA, HUD, FPC, state agencies. (EIS Order No. 90249.)

Draft Supplement

Cape Cod Canal, Bourne and Sagamore Highway Bridges Barnstable County, Mass. March 9: This statement supplements a final DIS filed in June 1977 concerning the O/M of the Cape Cod Canal located in Bourne and Sandwich in Barnstable County, Massachusetts. This statement discusses the major rehabilitation of the Bourne and Sagamore Highway Bridges. The major item of work will be replacement of the concrete decks which form roadways for the bridges. Other work will consist of repairs to structural steel and repainting of both of the superstructures. Also, 8-foot high suicide-detering barriers will be erected atop the railings. (New England Division) (EIS Order No. 90260.)

CIVIL AERONAUTICS BOARD

Contact: Mr. Steve Rothenburg, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5205.

Draft

Caribbean Area Service Investigation, Grant, Puerto Rico, March 8: Proposed is the issuance of grants for operating authority between various mainland points and San Juan to all fit, willing, and able applicants that have proposed service. The purpose of the action is to improve the quantity and the quality of air service to Puerto Rico. San Juan is the only point that will be significantly affected by this action. (EIS Order No. 90255)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203, 617-223-4635.

Final

Water Quality Management, Cape Cod, 208 Plan, Barnstable County, Mass., Mar. 6: The proposed action is to provide a comprehensive view of the water quality problems and develop alternative means of solving these problems to protect the water resources of the Cape Cod region located in Barnstable County, Massachusetts. The 208 program recommends: 1) that although central sewage treatment facilities are needed in some areas, the majority of the Cape's population will continue to rely on on-site disposal for the 20-year planning period; 2) land use controls; 3) water supply management; 4) non-point source controls; and 5) areawide management structure. Comments made by: USDA, HUD, DOI, DOT, State and local agencies, individuals. (EIS Order No. 90248)

Contact: Mr. Dan Sullivan, Region II, Environmental Protection Agency, 26 Federal Plaza, Room 1009, New York, N.Y. 10007, 212-264-8556.

Draft

WWT Facilities, Ramapo River Basin, Grants, Orange and Rockland Counties, N.Y., March 8: Proposed is the issuance of construction grants for wastewater treatment facilities in the Ramapo River Basin, Orange and Rockland Counties, New York. The recommended plan would expand and upgrade the wastewater treatment plant (WTP) of the village of Suffern; would upgrade the WTPS serving the village and Hamlet of Toxedo Park; and continue the present method of wastewater management in other areas. (EIS order No. 90256)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6306.

Draft

Hover Acres Planned Development, Longmont, Boulder County, Colo., Mar. 8: Proposed is the issuance of HUD Home Mortgage Insurance for Hover Acres planned development located within the city of Longmont, Boulder County, Colorado. The development will include the construction of 487 dwelling units and a 100-150 bed nursing facility within Hover Village (the retirement community) and 398 single-family and duplex units within Hover Acres subdivision. (HUD-R08-EIS-79-XI-D) (EIS order No. 90254)

Sky Lake South Subdivision, Orlando, Orange County, Fla., March 9: Proposed is the issuance of HUD home mortgage insurance for the Sky Lake South subdivision located in Orlando, Orange County, Florida. The development is on a 320 acre tract and will contain approximately 1,200 dwelling units. Sky Lake South is part of a 4,500 acre area designated for single family planned unit developments. (HUD-R04-EIS-77-21) (EIS order No. 90258)

Canterbury Square Development, Savage, Scott County, Minn., March 5: Proposed is the issuance of HUD Home Mortgage Insurance for the residential development of Canterbury Square located in Savage, Scott County, Minnesota. Phases of development will include the construction of approximately 757 housing units of which 454 will be single family, while the remainder are to be double family, townhouses, and apartments. (HUD-R05-EIS-78-11(D)) (EIS order No. 90242)

Draft

Quail Green Subdivision, Missouri City, Fort Bend County, Tex., March 6: Proposed is the issuance of HUD Home Mortgage Insurance for the Quail Green Subdivision located in Missouri City, Fort Bend County, Texas. When completed the subdivision will contain approximately 1,260 single-family homes and 620 townhouse units plus some shopping and recreational facilities. The Quail Green Tract involves approximately 407 acres of land. (HUD-R06-EIS-4D) (EIS order No. 90247)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891

BUREAU OF LAND MANAGEMENT**Draft**

Missouri Breaks Grazing Program, several counties in Montana, Mar. 9: Proposed is the implementation of an improved management program in the Missouri Breaks area of Montana. The plan involves nearly 2,200,000 acres of public land along with 6,300,000 acres of State and private land. The actions proposed are: (1) continued operation of 42 existing amps, (2) revision of 10 existing amps, (3) less intensive management of 251,000 acres of public land, (4) unallotted status on 31,000 acres of public land, (5) construction of various range improvements, and (6) an overall reduction of livestock use by one percent. The counties involved include: Blaine, Chouteau, Fergus, Garfield, Judith Basin, McCone, Musselshell, Petroleum, Phillips, and Valley. (DES-79-10) (EIS order No. 90259)

BUREAU OF RECLAMATION**Final Supplement**

Garrison Diversion Unit, Alternative Plans, several counties in North Dakota, Mar. 9: Proposed is the Garrison Diversion Unit (GDU), of the Pickslan Missouri Basin in North Dakota. This supplement presents seven alternative plans ranging from foregoing additional construction to development of the unit as authorized by Congress in 1965. The GDU is a multipurpose project providing for irrigation, fish and wildlife conservation, recreation, and flood control. The project will also include a system of canals, pumping plants, and reservoirs which would divert waters from the Missouri river. The statement supplements a final EIS filed January 1974 concerning the GDU, and a draft EIS filed June 1976 concerning the La Moure and Oakes section. (DES-79-7) (EIS order No. 90252)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Mail 396-SS, (301) 427-4152

Final

Morton Ranch Uranium Mill, License, Converse County, Wyo., Mar. 8: The proposed action is the issuance of a source license to United Nuclear Corporation for the construction and operation of the proposed Morton Ranch Uranium Mill with a product (yellow-cake) production limited to 1,008,640 kg (2,400,00 lb.) per year. The mill is located on Morton Ranch in Converse County, Wyoming, and it is estimated that ranch deposits contain about 13 million tons of uranium ore. Waste materials (tailings) from the mill will be produced at a rate of about 1800 mt (2000 tons) of ore solids per day and stored on site. (NUREG-0532) Comments made by: HEW, COE, DOE, DOI, EPA, FERC, USDA, State agencies, groups. (EIS order No. 90245)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357

FEDERAL HIGHWAY ADMINISTRATION**Draft**

Cole Street, 12th St. to Jefferson Ave. Improvement, St. Louis County, Mo., Mar. 5: Proposed is the removal of the existing four-lane pavement on Cole Street, from Twelfth Street to Jefferson Avenue, a distance of about one mile, and the construction of a new six-lane roadway. This project is located in St. Louis City, Missouri. The alternatives considered are: (1) no action, (2) postponement, (3) construction of a new six-lane roadway on Dr. Martin Luther King (MLK) Drive, (4) construction of new six-lane roadway on Dr. MLK Drive, connected to Cole Street at 14th Street, and (5) widening Cole Street to six lanes from 12th Street to Jefferson Avenue. (FHWA-MO-EIS-78-01-D) (EIS order No. 90243)

Final

Beaver Street, FL-10/US 90, Jacksonville, Duval County, Fla. Mar. 6: Proposed is the upgrading of Beaver Street (FL-10/US 90) in Jacksonville, Duval County, Florida. Plan implementation consists of the development of a two, four and six lane curb and gutter section from Bulls Bay Highway to I-95, a distance of approximately seven miles. The project will include, at different points along the route: Widening and resurfacing; installation of intersections, sidewalks, curbs, and gutters; restriping; and direct access. Also included will be a cloverleaf at the Edgewood Avenue/Beaver Street intersection. (FHWA-FLA-EIS-77-5F) Comments made by: EPA, DOI, USDA, State and local agencies (EIS order No. 90246)

STATEMENT TITLE INDEX—BY STATE AND COUNTY

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
Colorado	Boulder	Draft	Hover Acres Planned Development, Longmont.	90254	03-08-79	HUD
Florida	Duval	Final	Beaver Street, FL-10/US 90, Jacksonville.	90246	03-06-79	DOT
	Orange	Draft	Sky Lake South Subdivision, Orlando.	90258	03-09-79	HUD
Guam		Draft	Harbor of Refuge, Apra Harbor.	90244	03-05-79	COE
Idaho	Bonner	Final	Kootenai N.F., Keeler Planning Unit.	90253	03-08-79	USDA
Massachusetts	Barnstable	Final	Water Quality Management, Cape Cod, 208 Plan.	90248	03-06-79	EPA
		Supple	Cape Cod Canal, Bourne and Sagamore Hwy. Bridges.	90260	03-09-79	COE
Minnesota	Scott	Draft	Canterbury Square Development, Savage.	90242	03-05-79	HUD
Missouri	St. Louis	Draft	Cole Street, 12th St. to Jefferson Ave., Improvement.	90243	03-05-79	DOT

STATEMENT TITLE INDEX—BY STATE AND COUNTY—Continued

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
Montana	Lincoln	Final	Kootenai N.F., Keeler Planning Unit	90253	03-08-79	USDA
	Several	Draft	Missouri Breaks Grazing Program	90259	03-09-79	DOI
New York	Orange	Draft	WWT Facilities, Ramapo River Basin, Grants.	90256	03-08-79	EPA
	Rockland	Draft	WWT Facilities, Ramapo River Basin, Grants.	90256	03-08-79	EPA
North Dakota	Several	Supple	Garrison Diversion Unit, Alternative Plans	90252	03-09-79	DOI
Oregon	Douglas	Final	Umpqua River and Bar, Jetty Extension	90249	03-07-79	COE
Puerto Rico		Draft	Caribbean Area Service Investigation, Grant.	90255	03-08-79	CAB
Texas	Fort Bend	Draft	Quail Green Subdivision, Missouri City	90247	03-06-79	HUD
Wyoming	Converse	Final	Morton Ranch Uranium Mill, License	90245	03-06-79	NRC
Washington	Ferry	Final	Tonasket Planning Unit, Land Mgmt Plan, Okanogan N.F.	90251	03-07-79	USDA
	Okanogan	Final	Tonasket Planning Unit, Land Mgmt Plan, Okanogan N.F.	90251	03-07-79	USDA

APPENDIX II.—Extension/Waiver of Review Periods on EIS's Filed With EPA

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/extension	Date review terminates
NUCLEAR REGULATORY COMMISSION					
Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555, (301) 492-8446.	Pilgrim Nuclear Station Unit 2, Alternative Station.	Draft Supplement 90184	02/27/79	Extension	04/02/79

APPENDIX III.—EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

APPENDIX IV.—Notice of Official Retraction

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

APPENDIX V.—Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA

Federal Agency Contact	Title of Report	Date made available to EPA	Accession No.
U.S. ARMY CORPS OF ENGINEERS			
Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202) 693-6795.	Increment 1 of the East Fork Channel and Levee Improvement Project.	03/09/79	90257

APPENDIX VI.—Official Correction

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
DEPARTMENT OF COMMERCE				
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.	Tank Vessels Engaged in Domestic Trade.	Final 90216	03/12/79	This EIS was originally filed February 16, 1979 and published in February 27, FEDERAL REGISTER. The latter publication is an oversight and the No. 90216 will be voided.

[FR Doc. 79-8270 Filed 3-16-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS
COMMISSIONRADIO TECHNICAL COMMISSION FOR MARINE
SERVICES

Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 74, "Digital Selective Calling," Notice of 3rd Meeting, Wednesday, April 4, 1979-9:30 a.m. (Full-day meeting), Conference Room 7200, Nassif (DOT) Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

AGENDA

1. Call to order; Chairman's Report.
2. Administrative Matters.
3. Establishment of Working Groups.

Captain B. F. Hollingsworth, Chairman, SC-74, U.S. Coast Guard Headquarters, Washington, DC, Phone: (202) 426-1445.

Special Committee No. 71, "VHF Automated Radiotelephone Systems," Notice of 16th Meeting, Thursday, April 5, 1979-10:00 a.m. (Full-day meeting), Conference Room A-110, F.C.C. Annex, 1229-20th Street, N.W., Washington, DC.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Review of Digital Selcall Functions and Formats.
4. Preparation for IWP-5 Meeting April 17-20 at the Hague.

John J. Renner, Chairman SC-71, Advanced Technology Systems, Inc., 3426 N. Washington Blvd., Arlington, VA 22201, Phone: (703) 525-2664.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-8163 Filed 3-16-79; 8:45 am]

U.S. STANDARD BROADCAST STATION ASSIGNMENTS

List of Changes, Proposed Changes and Corrections

In the matter of notification under the provisions of Part III, Paragraph 7, of the North American Regional Broadcasting Agreement, Washington, D.C. 1950, and in accordance with Article III, Paragraph B of the agreement between the United States of America and the United Mexican States, Mexico, D.F. 1957.
List of changes, proposed changes, and corrections in assignments of U.S. standard Broadcast Stations.

U.S. List No. 1773					March 29, 1978					
Call Letters	Location	Power kw	Antenna Radiation w/m/kw	Schedule	Class	Antenna Height (ft)	Ground System		Date of FCC Action	Proposed date of change or commencement of operation
							No. Radials	Length (ft)		
WPHO	Providence, Rhode Island N 41 46 28 W 71 19 23 (Correction to provide expanded directional antenna radiation pattern)	5	DA-W ND-D-190	630 kHz U	III					
KPIA	Carmichael, California N 38 42 12 W 121 14 02 (Under construction - changes to proposed transmitter location and directional antenna system)	0.25	DA-1#	710 kHz U	II					3-29-78
WISW	Superior, Wisconsin N 46 39 14 W 92 08 51 (PO 5kw)	100/5W	ND-D-190 DA-N	710 kHz U	II					3-29-78 3-29-79
WWSG	South Miami Florida N 25 45 25 W 80 38 13 (change in call letters from WFUN)	5	DA-2	790 kHz U	III					
WTBC	Thomasville, North Carolina N 35 53 40 W 80 05 22 (Correction to geographical coordinates)	1	ND-184	790 kHz D	III	265	120	312		
KMTX	Farmington, New Mexico N 36 43 48 W 108 13 47 (PO 1 kw)	1	ND-188	960 kHz D	III	240	120	260	3-29-78 3-29-79	
KLAD	Klamath Falls, Oregon N 42 11 38 W 121 22 27D N 42 09 43 W 121 39 02N (PO 5kw, ND-186, D, 320 120 175)	5	ND-186 DA-N	960 kHz U	III					3-29-78 3-29-79
KREO	Tolleson, Arizona N 33 25 46 W 112 12 24 (PO Phoenix, 0.5kw, ND-175, 250 120 250, N 33 25 50 W 112 07 25 - also change in call letters from KREO)	10/0.25W	ND-191 NDN-186#	1010 kHz U	II	250	120	250	3-29-78 3-29-79	
KXNQ	Tenpe, Arizona N 33 22 34 W 111 57 56 (change in call letters from KUPD)	0.5	DA-1	1060 kHz U	II					
WENG	Tallahassee, Georgia N 33 44 06 W 85 15 08 (PO ND-175, 166 120 200 - Folded Unipole)	2.5	ND-194	1060 kHz D	II	294	120	200	3-29-78	
KRYM	Gilmer, Texas N 32 43 51 W 95 02 35 (PO 5kw, ND-189, 225 120 225)	10	ND-205	1060 kHz D	II	225	120	225	3-29-78 3-29-79	Top Loaded 39.5 degrees
WILD	Boston, Massachusetts N 42 24 40 W 71 04 28 (PO 1kw, ND-195)	5	ND-175#	1090 kHz D	II	254	120	225	3-29-78 3-29-79	
KFAI	San Francisco, California N 37 37 56 W 122 07 49 (PO DA-2)	50	DA-1	1100 kHz U	II					3-29-78 3-29-79

NOTICES

U.S. List No. 1773			Continued		March 29, 1978				
Call Letters	Location	Power kw	Antenna Radiation mV/m/kw	Schedule	Class	Antenna Height (ft)	Ground System No. Radials	Date of FCC Action	Proposed date of change or commencement of operation
~~EAAR~~	Long Island, Alaska N 61 33 40 W 149 43 04 (Assignment of call letters)	5	ND-213	1150 kHz D	III	340	120	250	
WAYS	Fort Lauderdale, Florida N 26 03 12 W 80 08 04 (PO N 26 06 12 W 80 15 34, also changes in directional antenna radiation pattern)	5	DA-D	1190 kHz D	II				3-29-78
WOKA	Atlanta, Georgia N 33 47 08 W 84 23 01 (PO 1kw, ND-193)	2	ND-185#	1190 kHz D	II	256	120	175	3-29-78 3-29-79
KORT	Grangeville, Idaho N 45 55 52 W 116 07 50 (Correction of geographical coordinates)	10/0.25W	ND-150	1230 kHz D	IV	150	152	100	
(NOM)	Surfside Beach-Garden City, South Carolina N 33 34 32 W 79 02 29	5	DA-D	1270 kHz D	III				3-29-78 3-29-79
WZUU	Milwaukee, Wisconsin N 43 05 25 W 87 54 54 (PO ND-239, 400 120 160(ave))	I	ND-239#	1290 kHz D	III	647	120	120-235 Tuned Wire Skirt	3-29-78
KZIP	Amarillo, Texas N 35 11 02 W 101 58 11 (PO ND-190, 200 120 175, N 35 13 23 W 101 48 38)	1	ND-192#	1310 kHz D	III	430	120	185	3-29-78
WJDQ	Meridian, Mississippi N 32 18 43 W 88 41 31 (PO 5kw, ND-193, D III, 200 120 200, N 32 22 52 W 88 40 22)	5	ND-232#	1330 kHz D	III	420	120	200	3-29-78
WYNA	Poncha, Puerto Rico N 18 01 05 W 66 42 14 (Under construction- changes in proposed transmitter location)	.5	ND-184	1330 kHz D	III	155	120	180	3-29-78
KWW	Wenatchee, Washington N 47 23 50 W 120 16 25 (PO ND-182, 150 120 115-240, N 47 26 17 W 120 19 20)	10/0.25W	ND-191	1340 kHz D	IV	200	120	155-200	3-29-78
WML	Groves, Florida N 28 21 58 W 80 45 08 (Change in call letters from WSEY)	1	ND-186 DA-N	1350 kHz D	II				
WRSC	State College, Pennsylvania N 40 48 50 W 77 53 30 (Now in operation with increase in power and changes in antenna system - also correction of antenna height)	2.5	ND-175#	1390 kHz D	III	180	120	180 Folded Unipole	
KNGE	Ontario, California N 34 05 41 W 117 36 46 (Change in call letters from K20M)	100/1W	DA-2	1510 kHz D	II				
WITS	Boston, Massachusetts N 42 16 30 W 71 01 53 (Change in m.e.o.v. of radiation in daytime directional antenna radiation pattern and call letters from WBEZ)	500/5W	DA-2	1510 kHz D	II				3-29-78
KYKH	Port Arthur, Texas N 30 01 25 W 93 58 42 (PO 1kw, ND-180#, 182 120 193(ave.), N 29 56 22 W 93 56 27)	2	DA-D	1510 kHz D	II				3-29-78 3-29-79
WQKE	Warner Robins, Georgia N 32 28 19 W 83 38 21 D N 32 38 01 W 83 40 18 W (Correction to daytime geographical coordinates)	10/0.5W	DA-N ND-D-189	1600 kHz D	III				
WOPK	Chesapeake, Virginia N 36 48 10 W 76 16 58 (PO 1kw)	2	ND-182	1600 kHz D	III	120	120	155	3-29-78 3-29-79

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 79-8164 Filed 3-16-79; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD**FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL****Meeting**

MARCH 9, 1979.

Pursuant to Section 10(a) of Public Law 92-463, entitled the Federal Advisory Committee Act, notice is hereby given of the meeting of the Federal Savings and Loan Advisory Council on Monday, April 30; Tuesday, May 1; and Wednesday, May 2, 1979. The meeting will commence at 9:00 a.m. on April 30, May 1 and 2 at the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. in the sixth floor Board Room.

MONDAY, APRIL 30

9:00 a.m.—General Discussion.
9:45 a.m.—Bank Board Goals.
11:45 a.m.—Forward Commitment Proposed Regulations.
1:00 p.m.—Money Market Certificates. Alternate Savings Plans. Interstate Branching—Washington, D.C. Capital Adequacy and Improved Profitability. Broader Investment and Lending Powers. Mutual Savings Banks Federal Charter. Schedule F of Semi-Annual Report. Discussion of Staff's Response to Resolution No. 102-78-11. Proposed Legislation 1979-1980. Alternative Sources of Funds.

TUESDAY, MAY 1

9:00 a.m.—Continued discussion of Monday afternoon topics.
1:00 p.m.—General discussion.

WEDNESDAY, MAY 2

9:00 a.m.—General discussion.

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

ROBERT H. MCKINNEY,
Chairman.

[FR Doc. 79-8150 Filed 3-16-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION**AGREEMENTS FILED**

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San

Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 9, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

AGREEMENT NO.: T-3577-1.

FILING PARTY: Randall V. Adams, Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

SUMMARY: Agreement No. T-3577-1 between Port of Palm Beach (Port) and Adams-Whiddon Farms, Inc. (AWF), modifies the parties' basic agreement providing for a one-year renewable exclusive lease to AWF of office space located at the Port of Palm Beach, Florida, as well as the non-exclusive right to use the Port's lands and dock facilities for the loading and unloading of AWF vessels. The purpose of this amendment is to extend the lease for one year.

AGREEMENT NO.: T-3782.

FILING PARTY: Mr. Robert M. McHale, McHale, Bufkin and Dees, 1901 Oak Park Boulevard, Lake Charles, Louisiana 70601.

SUMMARY: Agreement No. T-3782, between the Lake Charles Harbor and Terminal District (Port) and Crowley Maritime Corporation (Crowley), provides for the Port's 15-year lease (with renewal options) to Crowley of certain premises located in Calcasieu Parish, Louisiana, to be used for the operation of docks, storage facilities and marshalling facilities. As compensation, Crowley shall pay Port \$500 per acre per year for the first lease term.

AGREEMENT NO.: 8330-2

FILING PARTY: Pacific Coast Ocean Freight Forwarders Conference, c/o J. E. Lowden & Co., 465 California Street, San Francisco, CA. 94104.

SUMMARY: Agreement No. 8330-2 of the Pacific Coast Ocean Freight Forwarders Conference comprised of thirteen licensed independent ocean freight forwarders was originally noticed in the FEDERAL REGISTER on March 25, 1976. The Agreement has been subsequently modified by the deletion of

Article 5 which authorized the conference to prescribe minimum and/or maximum charges to be assessed by the members for forwarding services performed on cargoes moving via Pacific Coast Ports and to make other changes for clarification purposes. The purpose of the original modification is primarily to revitalize the original agreement approved by the Commission in December, 1956, but never fully implemented; to update its provisions to be in compliance with the Commission's General Orders; and to broaden the area of conference meetings to include meetings with direct and indirect carriers by rail, water, truck or air.

AGREEMENT NO.: 10363

FILING PARTY: Daniel M. Conaton, Esquire, United States Lines, Inc., One Broadway, New York, New York 10004.

SUMMARY: Agreement No. 10363, between United States Lines, Inc. (USL) and Tecomar, S.A. (Tecomar), is an agency agreement providing for USL's representation of Tecomar in the trade between the East Coast of the United States and Mexico. Also provided for in an appendix to the agreement are the terms and conditions of a lease/interchange agreement between Tecomar and USL.

AGREEMENT NO.: 10364.

FILING PARTY: Donald Brunner, Esquire, Ragan & Mason, 900 Seventeenth Street, N.W., Washington, D.C. 20006.

SUMMARY: Agreement No. 10364, between Sea-Land Service, Inc. (Sea-Land) and Hanjin Container Lines, Ltd. (HJCL), is a space charter agreement in the U.S. West Coast/Japan-Korea trade. The agreement provides for the reciprocal chartering of container space on the respective vessels of HJCL and Sea-Land on an as-needed, space-available basis. Compensation is established at a set rate per container. The proposed agreement also sets forth certain obligations of the parties as to responsibility for the equipment involved and its condition, the terms and termination provisions of the contract, the effect of force majeure, the requirements of satisfactory insurance for the equipment involved, and normal indemnification provisions. The agreement is proposed to remain in effect for a period of three (3) years from its effective date.

By order of the Federal Maritime Commission.

Dated: March 14, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-8162 Filed 3-16-79; 8:45 am]

[6730-01-M]

[Docket No. 79-16; License No. 1246]

E. ALLEN BROWN—INDEPENDENT OCEAN FREIGHT FORWARDER**Order of Investigation and Hearing**

On May 26, 1969, E. Allen Brown, a sole proprietor, was issued independent ocean freight forwarder license No. 1246. The issuance of the license was pursuant to section 44(b) of the Shipping Act, 1916, and the provisions of the Commission's General Order 4 governing the activities of licensed independent ocean freight forwarders.

During a compliance check of the licensee, conducted by the Commission's Gulf District Office in early 1978, information was developed which disclosed that E. Allen Brown had apparently violated § 510.23(f) of the Commission's General Order 4 on at least 107 occasions during the calendar year 1977.

Section 510.23(f) requires that each licensee promptly pay over to the oceangoing common carrier, or its agent, within seven working days after receipt thereof, or within five working days after departure of the vessel from the port of loading, whichever is later, all sums advanced the licensee by its principal for freight and transportation charges.

By certified letter dated July 31, 1978, the Office of Freight Forwarders advised Mr. Brown of the payover requirements of § 510.23(f) and that failure to respond to any lawful inquiry of the Commission could, pursuant to § 510.9(b) of General Order 4, result in the suspension or revocation of his license, after notice and hearing. Mr. Brown was requested to submit on a monthly basis the amount of money, identified by each shipper account, which is currently due and payable by the licensee to ocean common carriers showing with respect to each such account the length of time that the monies have been due and the dates such monies were received by the licensee. In addition, a financial statement (balance sheet), prepared by a Certified Public Accountant, was requested. Further, in light of the seriousness of the violations, Mr. Brown was directed to have the shippers for whom he acts as forwarder to pay ocean freight charges directly to the ocean carriers until this matter is resolved, and that he submit an affidavit of his understanding of the foregoing.

By letter and telex dated August 18, 1978, Mr. Brown submitted the affidavit and some of the requested information, but failed to provide the financial statement.

To date no further information has been submitted by Mr. Brown.

Section 510.9 of the Commission's General Order 4 provides that a li-

cense may be revoked, suspended or modified after notice and hearing for reasons which include:

(b) Failure to respond to any lawful inquiries or to comply with any lawful rules, regulations or orders of the Commission.

(d) Change of circumstances whereby the licensee no longer qualifies as an independent ocean freight forwarder.

(e) Such conduct as the Commission shall find renders the licensee unfit or unable to carry on the business of forwarding.

Therefore it is ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821 and 841(b)) and §§ 510.9 and 510.23(f) of Commission General Order 4 (46 CFR 510.9, 510.23(f)) that a proceeding be hereby instituted to determine:

1. Whether E. Allen Brown has violated § 510.23(f) of General Order 4 by failing to promptly pay over to the oceangoing common carrier, or its agent, within seven working days after receipt thereof, or within five working days after departure of the vessel from the port of loading, whichever is later, all sums advanced the licensee by its principal for freight and transportation charges.

2. Whether E. Allen Brown's independent ocean freight forwarder license should be revoked or suspended pursuant to:

a. Section 510.9(b) of general Order 4 for failure to comply with any lawful inquiries or to comply with any lawful rules, regulations or orders of the Commission;

b. Section 510.9(d) of General Order 4 for change of circumstances whereby the licensee no longer qualifies as an independent ocean freight forwarder.

c. Section 510.9(e) of General Order 4 for conduct which renders the licensee unfit to carry on the business of forwarding.

It is further ordered, That E. Allen Brown be named Respondent in this proceeding.

It is further ordered, That this proceeding be assigned for public hearing before an Administration Law Judge of the Commission's Office of Administrative Law Judges and that the proceeding shall initially be limited to the submission of affidavits of fact and memoranda of law;

It is further ordered, That the following schedule be adhered to:

April 18, 1979—Opening memorandum of law and affidavits of fact from the Commission's Bureau of Hearing Counsel;

April 2, 1979—Petitions to Intervene;

May 18, 1979—Memoranda of law and affidavits of fact from Respondent and any intervenors;

It is further ordered, That within two weeks following the submission of the affidavits of fact and memoranda of law of Respondent and intervenors, the parties will submit to the Administrative Law Judge written statements identifying any unresolved issues of fact and specifying the type of proce-

dures best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue an appropriate order establishing the procedure for their resolution. However, any additional procedure shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a showing that there are issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That any persons other than Respondent and Hearing Counsel who desire to become parties to this proceeding and to participate therein shall file a Petition to Intervene pursuant to Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72);

It is further ordered, That a notice of this order be published in the FEDERAL REGISTER and that a copy thereof be served upon Respondent and Hearing Counsel;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-8160 Filed 3-16-79; 8:45 am]

[6730-01-M]

[Docket No. 79-15]

WESTINGHOUSE ELECTRIC CORP. v. SEA-LAND SERVICE, INC.**Filing of Complaint**

Notice is given that a complaint filed by Westinghouse Electric Corporation against Sea-Land Service, Inc. was served March 12, 1979. The complaint alleges that respondent assessed a rate for a shipment of goods from New York to Bilbao, Spain which was unreasonable and unjust within the meaning of 46 U.S.C. 817 (section 18 of the Shipping Act, 1916).

Hearing in this matter, if any is held, shall commence on or before September 12, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents

or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-8161 Filed 3-16-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than April 5, 1979.

A. Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045:

CHEMICAL NEW YORK CORPORATION, New York, New York (finance activities; North Carolina): to engage, through its subsidiary, SunAmerica Credit Corporation, in making loans in excess of \$10,000, in addition

to activities previously authorized, from its 18 existing offices in North Carolina. The principal geographic areas to be served are towns in which those offices are located and certain outlying areas. Any credit insurance in connection with the proposed activity would be reinsured by two of Applicant's existing subsidiaries, Sun States Life Insurance Company and Great Lakes Insurance Company, at their offices in Cleveland, Ohio.

B. Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198:

1. COMMERCE COMPANIES, INC., Topeka, Kansas (insurance activities; Kansas): to engage in credit-related insurance agency activities now conducted by its subsidiary bank, Commerce Bank and Trust. The kinds of credit-related insurance coverages sold are reducing term life and accident and health insurance, level term life and accident and health insurance, hazard or property and casualty insurance protection collateral securing loans made by the bank, including fire, hail, and wind peril coverages, and insurance which is sold to individual borrowers in conjunction with or as part of an insurance package (as a matter of general practice) including liability insurance sold in conjunction with insurance relating to physical damage of an automobile purchase of which is financed by the bank and homeowner's insurance policies with respect to a residence mortgaged by the bank. These activities would be conducted from the bank's premises in Topeka, Kansas, and the geographic area to be served is Shawnee County, Kansas, and contiguous counties.

2. KANSAS CITY BANCSHARES, INC., Kansas City, Missouri (insurance activities; Kansas, Missouri): to act as agent or broker in the sale of any insurance for its subsidiary banks, Kansas City Bank & Trust Company and Westport Bank, and for the sale of life, accident and health, and property and casualty insurance directly related to extensions of credit by those banks. These activities would be conducted at the premises of the subsidiary banks in Kansas City, Missouri, and the geographic area to be served is the greater Kansas City metropolitan area.

3. FIRST PRATT BANCSHARES, INC., Pratt, Kansas (insurance activities; Kansas): to engage in the sale of life, accident and health, and other insurance directly related to extensions of credit by its subsidiary bank, First National Bank in Pratt, including fire and casualty insurance covering residences, automobiles, boats, inventory, equipment, and other property pledged to the bank to secure loans or lines of credit. These activities will be conducted from premises in Pratt,

Kansas, and the geographic area to be served is Pratt County and contiguous counties and Comanche County, Kansas.

C. Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California 94120:

1. BANKAMERICA CORPORATION, San Francisco, California (finance and insurance activities; Connecticut, Massachusetts): to engage, through its subsidiary, FinanceAmerica Corporation of Massachusetts, in making or acquiring loans and other extensions of credit such as would be made or acquired by a finance company, including making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; servicing loans and other extensions of credit; and the offering of life, accident and disability, and property insurance directly related to its extensions of credit. These activities would be conducted from an office in West Springfield, Massachusetts, and the geographic areas to be served are Hartford County, Connecticut, and Hamden and Hampshire Counties, Massachusetts.

2. BANKAMERICA CORPORATION, San Francisco, California (mortgage, leasing, and investment advisory activities; Arizona, California, Nevada): to engage, through its subsidiary, BA Mortgage and International Realty Corporation, in making or acquiring loans and other extensions of credit such as would be made by a mortgage company; leasing real property or acting as agent, broker, or advisor in the leasing of real property in accordance with the Board's Regulation Y; acting as investment or financial advisor to the extent of providing portfolio investment advice to others, with emphasis on real property investments and real property interests; and servicing loans and other extensions of credit. These activities would be conducted from an office in Newport Beach, California, and the geographic areas to be served are Arizona, southern California from San Bernardino and San Luis Obispo Counties south, and Clark County, Nevada.

3. RAINIER BANCORPORATION, Seattle, Washington (finance, leasing, and insurance activities; California): to engage through its subsidiary, Rainier Credit Company, in making or acquiring loans and other extensions of credit, including making consumer installment loans, purchasing consumer installment sales finance contracts, and making loans to small businesses; leasing personal property and equipment or acting as agent, broker, or advisor in such leasing in accordance with the Board's Regulation Y; and

acting as agent or broker with regard to life, disability, property and casualty insurance directly related to its extensions of credit. These activities would be conducted from an office in San Diego, California, and the geographic area to be served is the southern portion of California.

4. SECURITY PACIFIC CORPORATION, Los Angeles, California (escrow activities; California): to engage, through its subsidiary, SP Escrow Service, Inc., in acting as escrow agent for the purchase and sale of real property and the execution of all documents and dispersal of funds relating to loan transactions, and all other activities normally engaged in by an escrow company. These activities would be conducted from an office in Tarzana, California, and the geographic area to be served is California.

5. SECURITY PACIFIC CORPORATION, Los Angeles, California (escrow activities; California): to engage in the activities described in the preceding paragraph through the subsidiary identified there from an office in Santa Clara, California. The geographic area to be served is California.

6. SECURITY PACIFIC CORPORATION, Los Angeles, California (mortgage activities; Colorado): to engage, through its subsidiary, Security Pacific Mortgage Corporation, in the origination, acquisition, and servicing of mortgage loans, including development and construction loans on multi-family and commercial properties. These activities would be conducted from an office in Evergreen, Colorado, and the geographic area to be served is Colorado.

7. SECURITY PACIFIC CORPORATION, Los Angeles, California (mortgage activities; Washington): to engage in the activities described in the preceding paragraph through the subsidiary identified there from an office in Mountlake Terrace, Washington. The geographic area to be served is Washington.

8. SECURITY PACIFIC CORPORATION, Los Angeles, California (finance, factoring, and insurance activities; Oregon): to engage, through its subsidiary, Security Pacific Finance Corp., in making or acquiring loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses, and other extensions of credit such as would be made by a factoring company or consumer finance company; and acting as broker or agent for the sale of life, accident and health, and property and casualty insurance directly related to its extensions of credit. These activities would be conducted from an office

in West Linn, Oregon, and the geographic area to be served is Oregon.

D. Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, March 8, 1979.

EDWARD T. MULRENIN,
Assistant Secretary
of the Board.

[FR Doc. 79-8122 Filed 3-16-79; 8:45 am]

[6210-01-M]

FIRST FINANCIAL BANCSHARES, INC.

Formation of Bank Holding Company

First Financial Bancshares, Killeen, Texas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank of Killeen, Killeen, Texas, and of Fort Hood National Bank, Fort Hood, Texas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 7, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8123 Filed 3-16-79 8:45 am]

[6210-01-M]

HAWKEYE BANCORPORATION, INC.

Acquisition of Bank

Hawkeye Bancorporation, Inc., Des Moines, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Mt. Pleasant Bank and Trust Company, Mt. Pleasant, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than April 12, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 12, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.
[FR Doc. 79-8124 Filed 3-16-79; 8:45 am]

[6210-01-M]

KENT BANCSHARES, INC.

Formation of Bank Holding Company

Kent Bancshares, Inc., Kent, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of State Bank of Kent, Kent, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 12, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 12, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.
[FR Doc. 79-8125 Filed 3-16-79; 8:45 am]

[6210-01-M]

KERNDT BANK SERVICES, INC.

Formation of Bank Holding Company

Kerndt Bank Services, Inc., Lansing, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C.

1842(a)(1)) to become a bank holding company by acquiring 98 per cent or more of the voting shares of Kerndt Brothers Savings Bank, Lansing, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than April 5, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8126 Filed 3-16-79; 8:45 am]

[6210-01-M]

LIPSCOMB BANCSHARES, INC.

Formation of Bank Holding Company

Lipscomb Bancshares, Inc., Higgins, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First National Bank in Higgins, Higgins, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8127 Filed 3-16-79; 8:45 am]

[6210-01-M]

MAZEPPA BANCSHARES, INC.

Formation of Bank Holding Company

Mazeppa Bancshares, Inc., Mazeppa, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 84.2 per cent or more of the voting shares of Peoples State Bank of Mazeppa, Mazeppa, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 4, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8128 Filed 3-16-79; 8:45 am]

[6210-01-M]

MESQUITE BANCSHARES, INC.

Formation of Bank Holding Company

Mesquite Bancshares, Inc., Mesquite, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank of Mesquite, Mesquite, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 8, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8129 Filed 3-16-79; 8:45 am]

[6210-01-M]

MICHIGAN NATIONAL CORP.

Acquisition of Bank

Michigan National Corporation, Bloomfield Hills, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of Michigan National Bank—Ann Arbor, Ann Arbor, Michigan, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than April 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 18, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.

[FR Doc. 79-8130 Filed 3-16-79; 8:45 am]

[6210-01-M]

NATIONAL DETROIT CORP.

Acquisition of Bank

National Detroit Corporation, Detroit, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Peoples Bank and Trust of Alpena, Alpena, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve

System, Washington, D.C. 20551, to be received not later than April 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.
[FR Doc. 79-8131 Filed 3-16-79 8:45 am]

[6210-01-M]

OLD KENT FINANCIAL CORP.

Acquisition of Bank

Old Kent Financial Corporation, Grand Rapids, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of Central Michigan Bank and Trust Company Big Rapids, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than April 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.
[FR Doc. 79-8132 Filed 3-16-79; 8:45 am]

[6210-01-M]

ROCKFORD CITY BANCORP, INC.

Formation of Bank Holding Company

Rockford City Bancorp, Inc., Rockford, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent, less directors' qualifying shares, of the voting shares of the successor by merger to City National Bank & Trust Company of Rockford, Rock-

ford, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 9, 1979.

EDWARD T. MULRENIN,
Assistant Secretary of the Board.
[FR Doc. 79-8133 Filed 3-16-79; 8:45 am]

[4110-85-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Health

HEALTH MAINTENANCE ORGANIZATIONS

December Qualified List

AGENCY: Public Health Service, HEW.

ACTION: Notice, December list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and date of qualification of entities determined by the Secretary to be qualified health maintenance organizations. In addition, several changes are reported on a previously qualified HMO at the end of the list: a model designation, a change of address, and the service area has been revised.

FOR FURTHER INFORMATION CONTACT:

Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the FEDERAL REGISTER. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

NAME, ADDRESS, SERVICE AREA, AND DATE OF QUALIFICATION

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Southwest Medical Plan, (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 6061 Northwest Expressway, Suite 470, San Antonio, Texas 78201. Service area: Bexar County, Texas including the city of San Antonio. Date of qualification: December 31, 1978. (Achieved preoperational qualification on December 4, 1978.)

2. PacificCare, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1423 South Grand Avenue, Los Angeles, California 90015. Service area: Zip codes included in the area are as follows:

LOS ANGELES COUNTY

90001	90002	90003	90004	90005	90006	90007	90008
90009	90010	90011	90012	90013	90014	90015	90016
90017	90018	90019	90020	90021	90022	90023	90024
90025	90026	90027	90028	90029	90031	90032	90033
90034	90035	90036	90037	90038	90039	90040	90041
90042	90043	90044	90045	90046	90047	90048	90049
90056	90057	90058	90059	90061	90062	90063	90064
90065	90066	90067	90068	90069	90071	90201	90210
90211	90212	90220	90221	90222	90230	90240	90241
90242	90245	90247	90248	90249	90250	90254	90255
90260	90262	90265	90266	90270	90272	90274	90277
90278	90280	90290	90291	90301	90302	90303	90304
90305	90401	90402	90403	90404	90405	90501	90502
90503	90504	90505	90506	90601	90602	90603	90604
90605	90606	90638	90640	90650	90660	90670	90701
90706	90710	90712	90713	90715	90716	90717	90723
90731	90732	90744	90745	90746	90747	90802	90803
90804	90805	90806	90807	90808	90810	90813	90814
90815	90840	91001	91006	91010	91011	91016	91020
91024	91030	91040	91042	91046	91101	91103	91104
91105	91106	91107	91108	91201	91202	91203	91204
91205	91206	91207	91208	91214	91302	91303	91306
91310	91311	91316	91321	91324	91325	91326	91331
91335	91340	91342	91343	91344	91345	91350	91351
91352	91355	91356	91361	91364	91367	91401	91402
91403	91405	91406	91411	91423	91436	91501	91502
91504	91505	91506	91601	91602	91604	91605	91606
91607	91608	91702	91706	91711	91722	91723	91724
91731	91732	91733	91740	91744	91745	91746	91748
91750	91754	91765	91766	91767	91768	91770	91773
91775	91776	91780	91789	91790	91791	91792	91801
91803	93510	93532	93534	93543	93544	93550	93553
93563							

SAN DIEGO COUNTY

92002	92007	92008	92010	92011	92012	92014	92020
92021	92024	92025	92027	92032	92035	92037	92040
92041	92045	92050	92054	92064	92067	92068	92069
92071	92073	92075	92077	92078	92083	92101	92102
92103	92104	92105	92106	92107	92108	92109	92110
92111	92113	92114	92115	92116	92117	92118	92119
92120	92121	92122	92123	92124	92125	92126	92127
92128	92129	92131	92132	92133	92134	92135	92136
92137	92139	92140	92145	92154	92155	92162	

RIVERSIDE COUNTY

91752 92509

SAN BERNARDINO COUNTY

91701	91710	91730	91739	91743	91761	91762	91763
91764	91786	92335					

VENTURA COUNTY

91301	91304	91307	91360	91361	91362	93021	93063
93065							

ORANGE COUNTY

90620	90621	90623	90630	90631	90680	90720	90740
90742	90743	92601	92621	92625	92626	92627	92630
92631	92632	92633	92635	92640	92641	92643	92644
92645	92646	92647	92648	92649	92650	92651	92653
92655	92660	92661	92662	92665	92666	92667	92668

ORANGE COUNTY—Continued

92669 92670 92680 92683 92686 92701 92703 92704
92705 92706 92707 92708 92709 92710 92714 92715
92801 92802 92804 92805 92806 92807

Date of qualification: December 22, 1978.

3. San Luis Valley Health Maintenance Organization, (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 216 Victoria Avenue, Alamosa, Colorado 81101. Service area: San Luis Valley, Colorado and counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache, Colorado. Date of qualification: December 26, 1978.

(Preoperational Qualified Health Maintenance Organizations: 42 CFR 110.603(c))

1. HealthPlus, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 6611 Kenilworth Avenue, Suite 400, Riverdale, Maryland 20840. Service area: The following zip codes in Prince George's and Montgomery Counties, Maryland, and the District of Columbia:

PRINCE GEORGE'S COUNTY

20601 20607 20613 20623 20705 20710 20715 20716
20722 20735 20740 20769 20770 20780 20781 20782
20783 20784 20785 20786 20787 20788 20801 20810
20811 20822 20840 20870

MONTGOMERY COUNTY

20901 20902 20903 20904 20906 20907 20910

DISTRICT OF COLUMBIA

20011 20012 20017 20018 20019 20020 20021 20022
20023 20027 20028 20031 20032 20033

Date of qualification: December 28, 1978.

2. Protective Health Providers, (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 958 Black Mountain Road, San Diego, California 92126. Service area: San Diego County, California. Date of qualification: December 28, 1978.

(Transitionally qualified health maintenance organization: 42 CFR 110.603(b))

1. Southshore Health Plan, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 2327 New Road, Northfield, New Jersey 08225. Service area: Counties in New Jersey as follows:

ATLANTIC COUNTY

08037 08201 08203 08213 08215 08217 08220 08221
08225 08231 08232 08240 08241 08244 08310 08317
08319 08326 08330 08340 08341 08346 08350 08401
08402 08403 08404 08406

CAPE MAY COUNTY

08223 08226 08230 08248 08250 08270

OCEAN COUNTY AND BURLINGTON COUNTY

08087 08215 08224

Date of qualification: December 29, 1978.

Change in model designation, address and a revised service area:

The model designation, address, and service area of a previously qualified HMO listed in the annual cumulative list of qualified HMOs published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) is changed as follows:

Change from:

Health Care Plan of New Jersey, (Individual Practice Association Model, see Section

1310(b)(2)(A) of the Public Health Service Act), 123 North Church Street, Moorestown, New Jersey 08057. Service area: Burlington County and adjacent municipalities within Camden County. The zip codes included in the area are as follows:

BURLINGTON COUNTY

08011 08015 08016 08019 08022 08036 08041 08042
08046 08048 08053 08054 08055 08057 08060 08064
08065 08068 08073 08075 08088 08215 08224 08505
08511 08515 08518 08534 08562 08620

CAMDEN COUNTY

08003 08004 08007 08009 08021 08026 80333 08034
08035 08045 08049 08078 08083 08084 08091 08108
08107 08108

Change to:

Health Care Plan of New Jersey, (Staff Model, see section 1310(b)(1) of the Public Health Service Act), 1101 Kings Highway North—Suite 405, Cherry Hill, New Jersey 08034. Service area:

BURLINGTON COUNTY

08010* 08011 08015 08016 08019 08022 08036
08041 08042 08046 08048 08052* 08053 08054
08055 08057 08060 08064 08065 08068 08073
08075 08077* 08088 08505 08511 08515 08518
08554* 08562 08620

CAMDEN COUNTY

08002* 08003 08004 08007 08009 08021 08026
08033 08034 08035 08043* 08045 08049 08078
08083 08084 08091 08106 08107 08108 08012*
08029* 08030* 08031* 08059* 08081* 08089* 08095*
08101* 08102* 08103* 08104* 08105* 08109* 08110*

GLOUCESTER COUNTY

08012* 08063* 08086* 08093* 08096* 08097*

*Added zip codes.

Date of qualification: Operationally qualified—June 1, 1976.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMOs should be sent to the same office.

Dated: March 9, 1979.

HOWARD R. VEIT,
Director, Office of Health
Maintenance Organizations.

[FR Doc. 79-8108 Filed 3-16-79; 8:45 am]

[4110-08-M]

National Institutes of Health

CANCER CONTROL GRANT REVIEW COMMITTEE

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, March 29-30, 1979, Building 31A, Conference Room 4, Bethesda, Maryland, which was published in the FEDERAL REGISTER on February 21, 1979 (44 FR 10552). For further information, please contact Dr. Robert F. Browning, Executive Secretary, Westwood Building, Room 806, National Institutes of Health, Bethesda, Maryland 20014 (301/496-7413).

Dated: March 12, 1979.

SUZANNE L. FREMEAUX,

Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-8117 Filed 3-16-79; 8:45 am]

[4110-08-M]

CANCER CONTROL INTERVENTION PROGRAMS REVIEW COMMITTEE

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Cancer Control Intervention Programs Review Committee, National Cancer Institute, March 29-30, 1979, Linden Hill Hotel, Bethesda, Maryland, which was published in the FEDERAL REGISTER on February 21, 1979 (44 FR 10552). For further information, please contact Dr. Louis Ouellette, Executive Secretary, Westwood Building, Room 806, National Institutes of Health, Bethesda, Maryland 20014 (301/496-7413).

Dated: March 12, 1979.

SUZANNE L. FREMEAUX,

Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-8118 Filed 3-16-79; 8:45 am]

[4110-08-M]

CLINICAL APPLICATIONS AND PREVENTION ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, April 26-27, 1979, Federal Building, Conference Room 6C01, Bethesda, Maryland.

This meeting will be open to the public on April 26, from 1:30 p.m. to adjournment when the current progress of the Multiple Risk Factor Intervention Trial will be discussed. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 27, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract renewal proposals. The proposals and the discussions could reveal confidential trade secrets and personal information such as privileged unblinded medical data about individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland 20014, phone 301-496-4236, will provide summaries of meetings and rosters of committee members. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 216, Bethesda, Maryland 20014, phone 301-496-4323, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health)

Dated: March 12, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-8120 Filed 3-16-79; 8:45 am]

[4110-08-M]

GENERAL RESEARCH SUPPORT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, April 2, 3, and 4, 1979. The meeting will be held on April 2, in the Connecticut Room at the Holiday Inn, 8130 Wisconsin Ave., Bethesda, Maryland, 20014, and on April 3 and 4, 1979, in Conference Room 6, Bldg. 31-C, National Institutes of Health, Bethesda, Maryland 20014.

The meeting will be open to the public on April 2, 1979, from 8:00 p.m. to 10:00 p.m., to discuss administrative matters relating to the Biomedical Research Support Program.

In accordance with the provisions set forth in sections 552b(c)(4) and

552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 3, 1979, from 9:00 a.m. to recess and on April 4 from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-13, National Institutes of Health, Bethesda, Maryland 20014 (301) 496-6743, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.337, National Institutes of Health)

Dated: March 12, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-8116 Filed 3-16-79; 8:45 am]

[4110-08-M]

NATIONAL DIABETES ADVISORY BOARD

Public Hearings

Notice is hereby given that the National Diabetes Advisory Board will hold three public hearings on the subject of the Long-Range Plan to Combat Diabetes which was formulated by the National Commission on Diabetes and submitted to Congress on December 10, 1975. The Commission was charged with the task of formulating a plan for expanding and coordinating the national research effort in diabetes and for accelerating the development of programs in diabetes health care, control, and education. The Diabetes Plan included recommendations for new programs, increased appropriations for several Federal agencies, and the creation of a National Diabetes Advisory Board to advise the Congress and the Secretary of Health, Education, and Welfare concerning the Diabetes Plan. The Congress established the National Diabetes Advisory Board in October 1976.

The hearings will provide opportunity for interested members of the public to express their opinion to the Board regarding accomplishments and future needs within the Diabetes Plan. The Board desires to receive testimony from a wide variety of persons, including health care, education, and research professionals, patients, members of voluntary health organizations and all persons interested in the Dia-

betes Plan. The hearings will be open to the public subject to available space. Hearings will be held at the following times and locations:

WASHINGTON, D.C.

May 9, 1979; 9 a.m. to 6 p.m., Hubert H. Humphrey Building, Auditorium—1st Floor, 200 Independence Avenue SW.
Submission date: April 27, 1979.

ST. LOUIS, MISSOURI

June 20, 1979; 9 a.m. to 6 p.m., Barnes Hospital Complex, Wohl Auditorium—Ground Floor, 4960 Audubon Blvd.
Submission date: June 8, 1979.

SAN FRANCISCO, CALIFORNIA

July 11, 1979; 9 a.m. to 6 p.m., Hyatt, Union Square, Delores Room 3B, 345 Stockton.
Submission date: June 29, 1979.

Anyone wishing to speak at one of the hearings must receive prior approval from the Board. Requests to speak must be received no later than the submission date listed for that hearing, and should include the following information:

- (1) Name of person wishing to testify,
- (2) Professional affiliation (if any),
- (4) Address and telephone number where the person can be reached during business hours.

Requests should be sent to the National Diabetes Advisory Board, P.O. Box 30174, Bethesda, Maryland 20014. Each speaker will be allowed ten minutes, time permitting, and ten typewritten copies of the testimony must be submitted to the Board at the hearing. Additional written testimony of any length may be submitted at any time and will be distributed to Board members. For further information, call (301) 496-6045.

Following the three public hearings, the Board will convene a national conference on the Diabetes Plan in October 1979, at which invited professionals will discuss research, health care, and related programs and make recommendations for future needs and priorities within the Diabetes Plan. The results of the conference and the hearings will be incorporated in the Board's third annual report to the Congress. The Board's first annual report was submitted on May 1, 1978. Copies may be obtained by writing to the Board or calling (301) 496-6045. The second annual report will be submitted to the Congress in the Spring of 1979 and copies are expected to be available for the public before the hearings.

(Catalog of Federal Domestic Assistance Program No. 13.847, National Institutes of Health)

Dated: March 7, 1979.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.
FR Doc. 79-8121 Filed 3-16-79; 8:45 am]

[4110-08-M]

REVIEW OF CONTRACT PROPOSALS AND GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

Name of committee: Clinical Cancer Program Project and Cancer Support Review Committee (Clinical Cancer Program Project Review Subcommittee).

Dates: April 9-11, 1979.

Place: Building 31C, Conference Room 6, National Institutes of Health.

Times: Open—April 9, 8:30 a.m.-10:30 a.m.

Closed—April 9, 10:30 a.m.-5:30 p.m.

Closed—April 10, 8:30 a.m.-5:30 p.m.

Closed—April 11, 8:30 a.m.-adjournment.

Closure reason: To review research grant applications.

Executive Secretary: Dr. Louise G. Thomson, Westwood Building, Room 809, National Institutes of Health, Phone: 301/496-7924.

(Catalog of Federal Domestic Assistance Number 13.395, National Institutes of Health)

Name of committee: Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Review Subcommittee).

Dates: April 11, 1979.

Place: Hyatt Regency at Reunion Hotel, Regency A, 400 South Houston Street, Dallas, Texas 75207.

Times: Open—April 11, 8:30 a.m.-10:00 a.m.

Closed—April 11, 10:00-adjournment.

Closure reason: To review research grant applications.

Executive Secretary: Dr. William E. Stralle, Westwood Building, Room 853, National Institutes of Health, Phone: 301/496-7194.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395)

Name of committee: Biometry and Epidemiology Contract Review Committee.

Dates: April 25, 1979.

Place: Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20014.

Times: Open—April 25, 8:30 a.m.-9:00 a.m.

Closed—April 25, 9:00 a.m.-adjournment.

Closure reason: To review research contract proposals.

Executive Secretary: Dr. Wilna A. Woods, Westwood Building, Room 821, National Institutes of Health, Phone: 301/496-7153.

(Catalog of Federal Domestic Assistance Number 13.393, National Institutes of Health)

Dated: March 12, 1979.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-8119 Filed 3-16-79; 8:45 am]

[4110-83-M]

Public Health Service

NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

Designation of Health Professions, 1979-80 School Year

Section 751 of the Public Health Service Act (42 CFR Part 62) directs the Secretary of Health, Education, and Welfare to establish the National Health Service Corps Scholarship Program to obtain physicians, dentists, nurses and other health-related professions for the National Health Service Corps.

Notice is hereby given that for the school year 1979-80, in addition to students of medicine, osteopathy and dentistry, scholarship support is available under the National Health Service Corps Scholarship Program to students enrolled in:

1. Baccalaureate degree programs in pharmacy and nursing;
2. Master's degree programs in community health nursing, nurse practitioner education, nurse-midwifery and public health nutrition; and

3. Doctorate degree programs in podiatry, optometry and veterinary medicine.

First priority for participating in the National Health Service Corps Scholarship Program is given to individuals who received scholarships under section 758 of the Act, authorizing scholarships for first-year students of exceptional financial need. Because the number of National Health Service Corps scholarships available to students of optometry and pharmacy is limited, competition for the optometry and pharmacy awards will be restricted to students who have participated in the Scholarship Program for First-Year Students of Exceptional Financial Need.

FOR ADDITIONAL INFORMATION CONTACT:

NHSC Scholarship Program, Bureau of Health Manpower, Health Resources Administration, Center Building, Rm. 5-44, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6453.

Dated: March 9, 1979.

HENRY A. FOLEY,
Administrator.

[FR Doc. 79-8153 Filed 3-16-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

SOCORRO DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Public Law 94-579, that a meeting of the Socorro District Grazing Advisory Board will be held on Wednesday, April 18, 1979.

The meeting will begin at 9 a.m. in the Hospitality Room of the First State Bank at 103 Manzaneros Avenue NE, Socorro, New Mexico.

The Agenda for the meeting will include:

(1) Discussion of Proposed Allotment Management Plans for the East Socorro Grazing ES Area.

(2) How AMP Development Will Affect Base Property Preference Qualifications, Preference Statement and Grazing Permits.

(3) Public Comment Period.

(4) Arrangements for the Next Meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 2:00 p.m. and 2:30 or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management,

200 Neel Avenue NW, Socorro, New Mexico, 87801, by April 16, 1979. Depend on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

ARLEN P. KENNEDY,
District Manager.

MARCH 7, 1979.

[FR Doc. 79-8101 Filed 3-16-79; 8:45 am]

[4310-05-M]

Office of Surface Mining Reclamation and Enforcement

GLENHAROLD MINE FEDERAL COAL LEASE
M-070203 (ND)

A Modification of Coal Mining and Reclamation Plan With Stipulations; Proposed Decision To Approve

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Proposed Decision to Approve a Modification of Coal Mining and Reclamation Plan with Stipulations—Glenharold Mine Federal Coal Lease M-070203 (ND).

SUMMARY: Pursuant to §211.5 of Title 30, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining has performed a technical review of a modification mining and reclamation plan submitted by Consolidation Coal Company (Stanton, North Dakota 58571) to mine up to 16 acres by surface methods on a lease area of about 420 acres. The lease tract is located at the site of the existing Glenharold Mine in Mercer County, North Dakota (SW¼ NW¼, W½ SW¼, Section 32, T144N, R84W, 5th P.M. North Dakota). It is estimated that the coal will be mined from the M-070203 lease area in less than two years.

The purpose of this notice is to inform the public that the Regional Director, Region V, Office of Surface Mining, has recommended, based on staff and other reviews; including those of the North Dakota Reclamation and Siting Division, the Bureau of Land Management, and the Geological Survey, the Fish and Wildlife Service; approval with stipulations. Any persons having an interest which is or may be adversely affected, may, in writing, request a public meeting to discuss their views regarding this mining and reclamation plan.

DATES: All requests for public meetings must be made on or before April

9, 1979. No decision on the mine plan will be made by the Assistant Secretary—Energy and Minerals, prior to the expiration of the 20-day period.

ADDRESSES: The stipulations are available for review in the Region V, Office of Surface Mining, upon request. Request for public meetings must include the name and address of the requestor and must be submitted to the Regional Director, Region V, Office of Surface Mining, Room 270, 1823 Stout Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colorado 80202.

WALTER N. HEINE,
Director.

[FR Doc. 79-8098 Filed 3-16-79; 8:45 am]

[8230-01-M]

INTERNATIONAL COMMUNICATION AGENCY

CULTURALLY SIGNIFICANT OBJECTS FROM THE REPUBLIC OF KOREA

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects (described in the list filed as a part of this determination) imported from Korea for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement signed on December 12, 1978 with the National Museum of Korea and the museums named below. I also determine that the temporary exhibition or display of such objects entitled "5,000 Years of Korean Art" at The Asian Art Museum of San Francisco, San Francisco, Cal., beginning on or about May 1, 1979, to on or about September 30, 1979; Seattle Art Museum, Seattle, Wash., beginning on or about November 1, 1979 to on or about January 13, 1980; Art Institute of Chicago, Chicago, Ill., beginning on or about February 16, 1980 to on or about April 27, 1980; Cleveland Museum of Art, Cleveland, Ohio, beginning on or about June 10, 1980 to on or about August 10, 1980; The Museum of Fine Arts, Boston, Mass., beginning on or about September 16, 1980 to on or about No-

¹An itemized list of objects included in the exhibit "5,000 Years of Korean Art" is filed as part of the original document.

vember 30, 1980; The Metropolitan Museum of Art, New York, N.Y., beginning on or about January 5, 1981 to on or about March 15, 1981; and at The William Rockhill Nelson Gallery, Kansas City, Missouri, beginning on or about April 17, 1981 to on or about June 14, 1981, is in the national interest.

Public notice of this determination is ordered to be published in the FEDERAL REGISTER.

JOHN E. REINHARDT,
Director, International
Communication Agency.

MARCH 13, 1979.

[FR Doc. 79-8141 Filed 3-16-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 823-79]

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Publication of Department of Justice Forms Which Are To Be Presented to Financial Institutions

AGENCY: Department of Justice.

ACTION: Publication of Department of Justice forms which are to be presented to financial institutions under the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*

SUMMARY: At the request of various financial institutions, the Department of Justice is publishing the forms which it will present to financial institutions under the Right to Financial Privacy Act of 1978 ("Act"), 12 U.S.C. 3401 *et seq.*

FOR FURTHER INFORMATION CONTACT:

Abbe D. Lowell, Special Assistant to the Deputy Attorney General, Department of Justice, Washington, D.C. 20530; 202-633-4238.

SUPPLEMENTARY INFORMATION: The forms which are published herein include: (1) The certificate of compliance required by section 1103(b) of the Act, 12 U.S.C. 3403(b); (2) the customer authorization under section 1104(a) of the Act, 12 U.S.C. 3404(a) (including the statement of customer rights under the Act); (3) the formal written request for financial records to be submitted under section 1108 of the Act, 12 U.S.C. 3408; and (4) the formal written request for account information, and certificate of compliance with the Act, to be submitted under section 1113(g) of the Act, 12 U.S.C. 3413(g). One document that will also frequently be presented to banks—a court order issued under section 1109 of the Act, 12 U.S.C. 3409, granting delay of notice and prohibiting the fi-

nancial institution from disclosing that records have been obtained or that a request for records has been made—is not published here since its form and content are ultimately in the discretion of the issuing court.

Publication of the forms is intended only to inform financial institutions of the current format which the Department of Justice will follow in seeking financial records. This publication is not intended, and should not in any way be construed, to preclude the alteration of these forms by the Department of Justice in the future. Alterations may be made due to such factors as changes in the law, suggestions of ways that the forms might be improved, or the needs of a particular situation.

It is hereby ordered that the forms to be used by the Department of Justice under the Act be published as set forth below:

Dated: March 9, 1979.

BENJAMIN CIVILETTI,
Deputy Attorney General.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

**CERTIFICATE OF COMPLIANCE WITH
THE RIGHT TO FINANCIAL PRIVACY
ACT OF 1978**

TO: _____

(Name and Address of Financial
Institution)

FROM: _____

(Name of Government Agency)

I hereby certify that the applicable provisions of the Right To Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3422, have been complied with as to the

(Summons, Subpoena or Formal Written
Request)

presented on _____, 19— (Date),
for the following financial records of _____:

_____, 19— (Date).

(Address)

(Telephone)

(Signature)

(Name and Title of Official)

(Government Agency)

Pursuant to the Right To Financial Privacy Act of 1978, good faith reliance upon this certificate relieves, your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

§ 1103(b) of the Right To Financial Privacy Act, 12 U.S.C. § 3403(b)

FORM DOJ-461
3-10-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS TO FINANCIAL RECORDS

I, _____ (Name of Customer)
having read the explanation of my rights which is attached to this form, hereby authorize the

(Name and Address of Financial
Institution)

to disclose these financial records:

to _____,

(Name of Government Authorities Allowed
Access)

_____, for the following
purpose(s): _____

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than three months from the date of my signature.

_____, 19— (Date).

(Signature of Customer)

(Address of Customer)

§ 1104(a) of the Right to Financial Privacy Act, 12 U.S.C. § 3404(a)

FORM DOJ-462
3-10-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

**STATEMENT OF CUSTOMER RIGHTS
UNDER THE RIGHT TO FINANCIAL
PRIVACY ACT OF 1978**

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers or other financial institutions may give financial information about you to a Federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to make your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a Federal agency that wants to see your financial records may

do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose.

Generally, the Federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult with an attorney before making a challenge to a Federal agency's request.

Exemptions

In some circumstances, a Federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the Federal agency will be required to go to court to get permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper.

When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a Federal agency which obtains your financial records is prohibited from transferring them to another Federal agency unless it certifies in writing that the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If the Federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or to seek compliance with the law. If you win, you may be repaid your attorney's fees and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

(Address)

(Telephone)

(Name)

(Title)

(Government Agency)

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

**FORMAL WRITTEN REQUEST FOR
FINANCIAL RECORDS**

TO: _____

(Name and Address of Financial
Institution)

From: _____

(Name of Government Agency)

In connection with a legitimate law enforcement inquiry, you are requested, pur-

suant to the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3442, to assemble

(and reproduce or and make available) the following financial records pertaining to

(Name of Customer or Customers)

Upon your receipt of a Certification of Compliance with the Right To Financial Privacy Act of 1978, you will be relieved of any possible liability to the customer in connection with the disclosure of these financial records.

, 19— (Date).

(Address)

(Phone)

(Name and Title of Official)

(Government Agency)

Remarks:

§ 1108 of the Right To Financial Privacy Act, 12 U.S.C. § 3408

FORM DOJ-463
3-10-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

FORMAL WRITTEN REQUEST FOR ACCOUNT INFORMATION AND CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT

TO:

(Name and Address of Financial Institution)

FROM:

(Name and Address of Government Agency)

In connection with a legitimate law enforcement inquiry and pursuant to Section 1113(g) of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3413(g), you are requested to provide the following account information:

I hereby certify, pursuant to Section 1103(b), the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3403(b), that the provisions of the Act have been complied with as to this request for account information and that good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of this account information.

, 19— (Date)

(Telephone)

(Name and Title of Official)

(Signature)

(Government Agency)

Remarks:

§ 1113(g) of the Right To Financial Privacy Act, 12 U.S.C. § 3413(g)

FORM DOJ-475
3-10-79

[FR Doc. 79-7860 Filed 3-16-79; 8:45 am]

[4510-30-M]

NATIONAL COMMISSION FOR
MANPOWER POLICY

MEETING

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given that the National Commission for Manpower Policy will hold its sixteenth formal meeting on April 6, 1979, in the Mount Vernon Room of the Sheraton Carlton Hotel, 16th and K Streets, NW, Washington, D.C. The meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m.

The National Commission for Manpower Policy was established pursuant to Title V of the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203). The Act charges the Commission with the broad responsibility of advising the President, the Congress, the Secretary of Labor, and other Federal agency administrators on national employment and training issues. The Commission is specifically charged with reporting annually to the President and the Congress on its findings and recommendations with respect to the Nation's employment and training policies and programs.

The agenda will be concerned with (a) the impact of CETA eligibility criteria on single-heads of household (mandated by the Congress); (b) the findings of the second round of observations of the CETA Public Service Employment Program; and (c) the status of the Commission's Youth Task force.

Members of the general public or other interested individuals may attend this meeting. Members of the public desiring to submit written statements to the Commission that are germane to the agenda may do so provided such statements are in reproducible form and are submitted to the Director not later than two days before and seven days after the meeting.

Additionally, members of the general public may request to make oral statements to the Commission to the extent that the time available for the meeting permits. Such oral statements must be directly germane to the announced agenda items and written application must be submitted to the Director of the Commission three days before the meeting. This application shall identify the following: The name

and address of the applicant, the subject of his or her presentation and its relationship to the agenda; the amount of time requested; the individual's qualifications to speak on the subject matter; and shall include a justifying statement as to why a written presentation will not suffice. The Chairman reserves the right to decide to what extent public oral presentation will be permitted at the meeting. Oral presentations will be limited to statements of facts and views and shall not include any questions of Commission members or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting, working papers, and other documents prepared for the meeting will be available for public inspection five working days after the conference at the Commission's headquarters located at 1522 K Street, NW, Suite 300, Washington, D.C.

Signed at Washington, D.C., this fourteenth day of March 1979.

ISABEL V. SAWHILL,
Director, National Commission
for Manpower Policy.

[FR Doc. 79-8216 Filed 3-16-79; 8:45 am]

[4510-27-M]

NATIONAL COMMISSION ON
UNEMPLOYMENT COMPENSATION

TESTIMONY ON REINSURANCE PLANS

Meeting

A considerable proportion of testimony before the Commission on Saturday, March 31, 1979, (at a meeting extending from March 29) will be devoted to proposals for a system of reinsurance of State unemployment funds against the costs of extremely high benefit expenditures. The public is welcome to attend the hearing and to furnish the Commission, in writing, with comments and suggestions on proposals made by witnesses.

The meeting will take place in the Sheraton-Southfield Hotel, 17017 West Nine Mile Road, Southfield, Michigan.

Telephone inquiries and communications concerning this meeting should be directed to:

James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209, (703) 235-2782.

Signed at Washington, D.C. this 13th day of March, 1979.

JAMES M. ROXBROW,
Executive Director, National
Commission on Unemploy-
ment Compensation.

[FR Doc. 79-8213 Filed 3-16-79; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

HUMANITIES PANEL

Meeting

MARCH 14, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

1. Date: April 5 and 6, 1979. Time: 9 a.m. to 5:30 p.m. Room: 1130. Purpose: To review applications for the development of humanities Special Program formats submitted to the National Endowment for the Humanities for projects beginning after July 1, 1979.

2. Date: April 5 and 6, 1979. Time: 9 a.m. to 5:30 p.m. Room: 314. Purpose: To review applications in State, Local and Regional History that have been submitted to the General Research Program of the National Endowment for the Humanities for projects beginning September 1, 1979.

3. Date: April 10 and 11, 1979. Time: 9 a.m. to 5:30 p.m. Room: 314. Purpose: To review Museums and Historical Organizations Program applications submitted to the National Endowment for the Humanities for projects beginning after July 1, 1979.

4. Date: April 19, 1979. Time: 9 a.m. to 5:30 p.m. Room: 1134. Purpose: To review conference proposals submitted to the National Endowment for the Humanities for projects beginning after June 1, 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Of-

ficer, Mr. Stephen J. McCleary, 806 15th Street, N.W., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 79-8207 Filed 3-16-79; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR ASTRONOMY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomy. Date and time: April 5 and 6, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. William E. Howard, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, D.C.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short range and long range plans in astronomy, including a recommendation of relative priorities.

Agenda:

APRIL 5, 1979

A.M.—I. Introductory Remarks. II. Minutes of Previous Meeting. III. Short Status Reports. IV. Discussion of the Budget. V. Committee and Sub-Committee Activities on Priorities and Initiatives.

P.M.—VI. Committee Discussions of Astronomy Divisions' Long Range Plans.

APRIL 6, 1979

A.M.—VII. Grant Program Presentation: Stellar Systems and Motions/Dr. Harold H. Lane. VIII. Discussion of Problems in Astronomy as perceived by the Centers' Directors.

P.M.—IX. Review Procedures for Centers and large Grantee Operations. X. Critique of the Meeting.

M. REBECCA WINKLER,
Committee Management
Coordinator.

MARCH 14, 1979.

[FR Doc. 79-8138 Filed 3-16-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON ECOLOGICAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Ecological Sciences of the Advisory Committee for Environmental Biology.

Date and Time: April 19 and 20, 1979; 8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact persons: Dr. George W. Cox, Program Director, Ecology Program, 202-632-7324, and Dr. Melvin I. Dyer, Program Director, Ecosystem Studies Program, 202-632-5854, Room 336, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in ecological sciences.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management,
Coordinator.

MARCH 14, 1979.

[FR Doc. 79-8139 Filed 3-16-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON LAW AND SOCIAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Law and Social Sciences of the Advisory Committee for Social Sciences.

Date and time: April 5 and 6, 1979, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 321, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Part open—2:00 p.m. to 5:00 p.m., April 5, 1979. Closed—9:00 a.m.

to 2:00 p.m., April 5, 1979, and 9:00 a.m. to 5:00 p.m., April 6, 1979.

Contact person: Dr. Stephen L. Wasby, Program Director, Law and Social Sciences Program, Room 312, National Science Foundation, Washington, D.C. 20550, Telephone (202) 632-5816.

Summary of minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Law and Social Sciences.

Agenda: Open—2:00 to 5:00, April 5—Policy for Program. General Discussion of program scope and criteria. Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management
Coordinator.

MARCH 14, 1979.

[FR Doc. 79-8137 Filed 3-16-79; 8:45 am]

[7555-01-M]

TASK GROUP NO. 6 OF THE NSF ADVISORY COUNCIL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group No. 6 of the NSF Advisory Council.

Place: Room 523, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20500.

Date: Thursday, April 5, 1979.

Time: 9:00 a.m. until 5:00 p.m.

Type of meeting: Open.

Contact person: Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, NW, Washington, D.C. 20550. Telephone: 202-632-4368.

Purpose of task group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, National Science Founda-

tion, Room 248, 1800 G Street, NW, Washington, D.C. 20550.

Agenda: To examine the process that has been used by NSF in allocating its resources to different fields and programs, and to make any suggestions it deems appropriate to modify or improve on existing procedures.

Dated: March 14, 1979.

M. REBECCA WINKLER,
Committee Management
Coordinator.

[FR Doc. 79-8136 Filed 3-16-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

COMMONWEALTH EDISON CO.

Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 44 and 41 to Facility Operating License Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company (the licensee) which revise Technical Specifications for Zion Station, Unit Nos. 1 and 2, located in Zion, Illinois. The amendments are effective as of the date of issuance.

These amendments extend the FNH rod bow penalty curve and the EFPH clad collapse times to include higher region average fuel burnup for a maximum of four extended burnup assemblies for Zion Unit 2 for a maximum of two additional cycles.

The applications for these amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of this action was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the license amendment and has concluded that an environmental impact statement for this particular action is not warranted because the action will not significantly affect the quality of the human environment.

For further details see (1) the applications for amendments dated October 27, 1978 as supplemented November 21, 1978 and February 13, 1979, (2) the above cited amendments and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. These items are available for public inspection at the Commission's

Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 7th day of March, 1979.

For the Nuclear Regulatory Commission.

MARSHALL GROTEHUIS,
Acting Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-8185 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-254 and 50-265]

COMMONWEALTH EDISON CO. AND IOWA-ILLINOIS GAS AND ELECTRIC CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 51 and 48 to Facility Operating Licenses Nos. DPR-29 and DPR-30, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the license for operation of the Quad-Cities Nuclear Power Station, Units Nos. 1 and 2. The amendment becomes effective on February 23, 1979.

The amendments add a license condition to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filings dated November 18, 1977, May 19, 27 and July 28, 1978, and the Commission's Security Plan Evaluation Report are being

withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendments Nos. 51 and 48 to Licenses Nos. DPR-29 and DPR-30 and (2) the Commission's related letter to the licensee dated March 12, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Moline Public Library, 504-17th Street, Moline, Illinois 60625. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of March 1979.

For the Nuclear Regulatory Commission.

DAVID M. VERRELLI,
Acting Chief, Operating Reactors
Branch No. 3, Division of
Operating Reactors.

[FR Doc. 79-8180 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-334]

DUQUESNE LIGHT CO., ET AL

Order To Show Cause

In the matter of Duquesne Light Co., and Ohio Edison Co., and Pennsylvania Power Co. (Beaver Valley Power Station, Unit No. 1) Docket No. 50-334; Order To Show Cause.

I.

The Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensee) is the holder of Facility Operating License No. DPR-66, which authorizes operation of the Beaver Valley Power Station, Unit No. 1 (the facility) at power levels up to 2652 megawatts thermal (rated power). The facility, which is located at the licensee's site in Beaver County, Pennsylvania, is a pressurized water reactor used for the commercial generation of electricity.

II.

On December 6, 1978 the licensee filed a Licensee Event Report, LER 78-53, indicating that there were two piping systems for which stress computations inadvertently had not been completed using a piping analysis computer code. These systems have since been reanalyzed and design modifications have been completed. In the course of the reanalysis, significant discrepancies were observed between

the original computer code used to analyze earthquake loadings and a currently acceptable computer code developed for this purpose.

In the course of a meeting on March 8, 1979 to discuss these matters, the Licensee informed the NRC staff that the differences in predicted piping stresses between the two computer codes is attributable to the fact that the piping analysis code specified in the application for an operating license uses an algebraic summation of the loads predicted separately by the computer code for both the horizontal component and for the vertical component of seismic events. This incorrect treatment of such loads was not recognized at that time. Such loads should not be algebraically added (with predicted loads in the negative direction offsetting predicted loads in the positive direction) unless far more complex time-history analyses are performed. Rather, to properly account for the effects of earthquakes, as required by General Design Criterion 2 for systems important to safety, such loads should be combined absolutely or, as is the case in newer codes, using techniques such as the square root of the sum of the squares. This conforms to current industry practice.

The inappropriate analytical treatment of load combinations discussed above becomes significant for piping runs in which the horizontal seismic component can have both horizontal and vertical components on piping systems, and the vertical seismic component also has both horizontal and vertical components. It is in these runs that the predicted earthquake loads may differ significantly.

Although the greatest differences in predicted loads would tend to be limited to localized stresses in pipe supports and restraints or in weld attachments to pipes, there could be a substantial number of areas of high stress in piping as well as a number of areas in which there is potential for damage to adjacent restraints or supports, which could have significant adverse effects on the ability of the piping system to withstand seismic events.

In order to ascertain the specific systems that are potentially affected by this error, members of the NRC staff on March 10, 11 and 12 accompanied the Licensee's representatives to the offices of Stone and Webster, the architect-engineer of the facility to review detailed designs and computations for some of the piping systems of principal potential concern. Concurrently, on March 9, 1979 the Licensee suspended power operation of the facility. Based on this more detailed review, the NRC staff has concluded that until full reanalysis of all potentially affected piping systems important to safety has been completed with

a piping analysis computer code which does not contain the algebraic summation error, the potential for serious adverse effects in the event of an earthquake is sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised.

In view of the safety significance of this matter as discussed above, the Director of the Office of Nuclear Reactor Regulation has concluded that the public health and safety requires that the present suspension of operation of the facility should be continued: (1) Until such time as the piping systems for all affected safety systems have been reanalyzed for earthquake events to demonstrate conformance with General Design Criterion 2 using a piping analysis computer code which does not contain the error discussed above, and (2) if such reanalysis indicates that there are components which deviate from applicable ASME Code requirements, until such deviations are rectified.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is hereby ordered That the Licensee show cause, in the manner hereinafter provided.

(1) Why the Licensee should not reanalyze the facility piping systems for seismic loads on all potentially affected safety systems using an appropriate piping analysis computer code which does not combine loads algebraically;

(2) Why the Licensee should not make any modifications to the facility piping systems indicated by such reanalysis to be necessary; and

(3) Why facility operation should not be suspended pending such reanalysis and completion of any required modifications.

In view of the importance to safety of this matter, as described herein, the Director of the Office of Nuclear Regulation has determined that the public health and safety or interest require that the action be effective immediately, pending further Order of the Commission. Accordingly, within 48 hours of the receipt of this Order, the facility shall be placed in cold shutdown condition, and shall remain in such mode until further Order of the Commission.

The Licensee may, within twenty days of the date of this Order, file a written answer to this Order under oath or affirmation. Within the same time, the Licensee or any interested person may request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place for hearing. Upon fail-

ure of the Licensee to file an answer within the time specified, the Director, Office of Nuclear Reactor Regulation will, without further notice, issue an order suspending further activities under Operating License DPR-66.

In the event a hearing is requested, the issues to be considered to such hearing shall be:

Whether operation under Facility License No. DPR-66 should be suspended until (1) the piping systems for all affected safety systems are reanalyzed for earthquake events using an appropriate piping analysis computer code which does not combine seismic loads algebraically, and until (2) any modifications required to restore the system to conformance with applicable ASME Code requirements are completed.

Dated at Bethesda, Maryland this 13th day of March, 1979.

For the Nuclear Regulatory Commission.

HAROLD R. DENTON,
Director, Office of
Nuclear Reactor Regulation.

[FR Doc. 79-8168 Filed 3-16-79; 8:45 am]

[7590-01-M]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director

General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-D6, "Ultimate Heat Sink and its Directly Associated Heat Transport Systems in Nuclear Power Plants," has been developed. The Working Group, consisting of Mr. R. D. Harden of the United Kingdom and Mr. E. P. O'Donnell (Ebasco Services, Inc.) of the United States of America, developed the initial draft of this Safety Guide from an IAEA collation during a meeting on January 10-21, 1977. The Working Group draft of this Safety Guide was modified by the IAEA Technical Review Committee on Design at its meetings in September 1977 and September 1978. The Senior Advisory Group subsequently reviewed and further modified this Guide at its meeting on December 11-15, 1978, and we are soliciting public comments on this modified draft. Comments on this draft received by May 10, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland this 12th day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of
Standards Development.

[FR Doc. 79-8168 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION)

Order To Show Cause

I.

The Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes operation of the Maine Yankee Atomic Power Station, (the facility) at power levels up to 2630 megawatts thermal (rated power). The facility, which is located at the Licensee's site in Lincoln County, Maine, is a pressurized water reactor used for the commercial generation of electricity.

II.

In the course of evaluation of certain piping design deficiencies in connection with the Beaver Valley Power Station, Docket 50-334, significant dis-

crepancies were observed between the original piping analysis computer code used to analyze earthquake loads by Stone and Webster, the architect-engineer for that facility, and a currently acceptable computer code developed for this purpose.

In the course of a meeting on March 8, 1979 to discuss these matters, the Beaver Valley Licensee informed the NRC staff that the difference in predicted piping stresses between the two computer codes is attributable to the fact that the piping analysis code used for a number of piping systems in that facility uses an algebraic summation of the loads predicted separately by the computer code for both the horizontal component and for the vertical component of seismic events. This incorrect treatment of such loads was not recognized at that time. Such loads should not be algebraically added (with predicted loads in the negative direction offsetting predicted loads in the positive direction) unless far more complex time-history analyses are performed. Rather, to properly account for the effects of earthquakes, as required by General Design Criterion 2 for systems important to safety, such loads should be combined absolutely or, as is the case in the newer codes, using techniques such as the square root of the sum of the squares. This conforms to current industry practice.

The inappropriate analytical treatment of load combinations discussed above becomes significant for piping runs in which the horizontal seismic component can have both horizontal and vertical components on piping systems, and the vertical seismic component also has both horizontal and vertical components. It is in these runs that the predicted earthquake loads may differ significantly.

Although the greatest differences in predicted loads would tend to be limited to localized stresses in pipe supports and restraints or in weld attachments to pipes, there could be a substantial number of areas of high stress in piping, as well as a number of areas in which there is potential for damage to adjacent restraints or supports, which could have significant adverse effects on the ability of the piping system to withstand seismic events.

The NRC staff communicated with Stone and Webster, who was also the architect-engineer for the Maine Yankee facility, to ascertain whether the conditions identified for Beaver Valley were also applicable to Maine Yankee. We were informed that since the same revision of the same computer code had been used for both Beaver Valley and Maine Yankee, a similar problem may be anticipated. The NRC informed the Licensee of these facts

by phone on Friday, March 9 and on Sunday, March 11, 1979.

In order to ascertain the specific systems at Beaver Valley that could be potentially affected by this error, members of the NRC staff on March 10, 11 and 12 went to the offices of Stone and Webster, the architect-engineer of both Beaver Valley and Maine Yankee to review detailed designs and computations for some of the piping systems of principal potential concern. Concurrently, on March 9, 1979 the Beaver Valley Licensee suspended power operation of that facility. Based on this more detailed review, the NRC staff has concluded that until full reanalysis of all potentially affected piping systems important to safety has been completed with a piping analysis computer code which does not contain the algebraic summation error, the potential for serious adverse effects at the Maine Yankee facility exists in the event of an earthquake and could be sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised.

In view of the safety significance of this matter as discussed above, the Director of the Office of Nuclear Reactor Regulation has concluded that the public health and safety requires that an orderly suspension of operation of the facility should be effected immediately and that, in order to provide adequate protection of public health and safety the facility operation should be suspended: (1) Until such time as the piping systems for all affected safety systems have been reanalyzed for earthquake events to demonstrate conformance with General Design Criterion 2 using a piping analysis computer code which does not contain the error discussed above, and (2) if such reanalysis indicates that there are components which deviate from applicable ASME Code requirements, until such deviations are rectified.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is hereby ordered That the Licensee show cause, in the manner hereinafter provided,

(1) Why the Licensee should not reanalyze the facility piping systems for seismic loads on all potentially affected safety systems using an appropriate piping analysis computer code which does not combine loads algebraically;

(2) Why the Licensee should not make any modifications to the facility piping systems indicated by such reanalysis to be necessary; and

(3) Why facility operation should not be suspended pending such reanal-

ysis and completion of any required modifications.

In view of the importance to safety of this matter, as described herein, the Director of the Office of Nuclear Reactor Regulation has determined that the public health and safety or interest require that this action be effective immediately, pending further Order of the Commission. Accordingly, within 48 hours of the receipt of this Order, the facility shall be placed in cold shutdown condition, and shall remain in such mode until further Order of the Commission.

The Licensee may, within twenty days of the date of this Order, file a written answer to this Order under oath or affirmation. Within the same time, the Licensee or any interested person may request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place for hearing. Upon failure of the Licensee to file an answer within the time specified, the Director, Office of Nuclear Reactor Regulation will, without further notice, issue an order suspending further activities under Operating License DPR-36.

In the event a hearing is requested, the issues to be considered at such hearing shall be:

Whether operation under Facility License No. DPR-36 should be suspended until (1) the piping systems for all affected safety systems are reanalyzed for earthquake events using an appropriate piping analysis computer code which does not combine seismic loads algebraically, and until (2) any modifications required to restore the system to conformance with applicable ASME Code requirements are completed.

Dated at Bethesda, Maryland this 13th day of March, 1979.

For the Nuclear Regulatory Commission.

HAROLD R. DENTON,
Director, Office of
Nuclear Reactor Regulation.

[FR Doc. 79-8165 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the licensee), which revised the Technical Specifications for operation of the Cooper Nuclear Station (the facility) located in Nemaha County, Nebraska.

The amendment is effective as of its date of issuance.

The amendment involves changes to the Technical Specifications to delete the requirement for the thermal mixing zone limit and the associated monitoring program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rule and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the amendment and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated February 1973.

For further details with respect to this action, see (1) the application for amendment dated July 11, 1978, (2) Amendment No. 54 to License No. DPR-46, and (3) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Auburn Public Library, 118-15th Street, Auburn, Nebraska 68305. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 9th day of March 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors
Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-8181 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-282 and 50-306]

NORTHERN STATES POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 33 and 27 to Facility Operating License Nos. DPR-42 and

DPR-60, issued to the Northern States Power Company (the licensee), which revised Technical Specifications for operation of Unit Nos. 1 and 2 of the Prairie Island Nuclear Generating Plant (the facilities) located in Goodhue County, Minnesota. The amendments are effective as of their date of issuance.

These amendments permit the deletion of the reactor turbine trip below 50 percent power in both Units.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 3, 1978, (2) Amendment Nos. 33 and 27 to License Nos. DPR-42 and DPR-60, respectively and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental Conservation Library of the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 2nd day of March, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-8183 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 27-39]

NUCLEAR ENGINEERING CO. INC. (SHEFFIELD, ILLINOIS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE)

Amended Order Setting Oral Argument

On March 7, 1979, this Board entered an Order setting oral argument in this matter for March 27, 1979 in Peoria, Illinois.

Subsequently, on March 8, 1979, the Applicant, by its counsel, filed a document entitled "Notice to Atomic Safety and Licensing Board of Withdrawal of Application and Termination of License for Activities at Sheffield". To this document, counsel for Applicant attached a proposed order for this Board to enter.

These documents are being treated by this Board as a motion pursuant to § 2.730 of the Commission's Rules of Practice. Accordingly,

It is ordered That the oral argument scheduled for 10:00 a.m. on March 27, 1979, at the County Board Room (Room 103), Peoria County Courthouse, Main Street, Peoria, Illinois, in addition to the matters set forth in this Board's original order setting oral argument, will be for the purpose of hearing argument from all parties upon the Applicant's motion of March 8, 1979 and answers thereto. Written answers to Applicant's March 8, 1979 motion shall be filed by March 20, 1979.

Dated at Bethesda, Maryland this 13th day of March 1979.

For the Atomic Safety and Licensing Board.

ANDREW C. GOODHOPE,
Chairman.

[FR Doc. 79-8187 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. STN 50-437]

OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS)

Order¹

This Order serves to grant Applicant's Motion (#10) To Establish Schedule dated March 8, 1979.

1. The public hearing will be resumed on April 4, 1979 at 9:30 a.m. at the following location:

NRC Public Hearing Room, 5th Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland 20014.

Said hearing will continue on April 5 and 6, 1979.

¹This Order serves to grant Applicant's Motion (#10) To Establish Schedule dated March 8, 1979.

2. Evidence will be presented on Atlantic County Citizens Council On Environment Contentions 3a and 3c. By no later than March 24, 1979, all parties shall file an identification of the evidence they expect to present at the resumed hearings, including supplemental testimony, if any, and a listing of witnesses.

It is so Ordered.

Dated at Bethesda, Maryland, this 12th day of March, 1979.

For the Atomic Safety and Licensing Board.

SHELDON J. WOLFE,
Chairman.

[FR Doc. 79-8179 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-1061]

OREGON STATE UNIVERSITY

Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated September 13, 1978, as supplemented December 18, 1978, Oregon State University (the licensee) requested authorization to dismantle the AGN 201 Reactor (the facility), a research reactor located in Corvallis, Oregon, and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts, and Termination of Facility License" was published in the FEDERAL REGISTER on November 9, 1978 (43 FR 52305). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis for the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an environmental impact appraisal for this action. Based on that appraisal, the Commission has determined that this action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, Oregon State University is hereby authorized to dismantle the AGN 201 Reactor covered by Fa-

cility License No. R-51 as amended, and dispose of the component parts in accordance with their dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and decontamination, the submission of a report on the radiation survey to confirm that radiation levels in the facility area meet the values defined in the dismantling plan and inspection by representatives of the Commission, consideration will be given to whether a further order should be issued terminating Facility License No. R-51.

For further details with respect to this action see (1) the application for authorization to dismantle facility and dispose of component parts dated September 13, 1978, as supplemented December 18, 1978, (2) the Commission's related Safety Evaluation, (3) the Commission's Environmental Impact Appraisal, and (4) the Commission's Negative Declaration dated March 8, 1979 (which is also being published in the FEDERAL REGISTER). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 8th day of March 1979.

For the Nuclear Regulatory Commission.

BRIAN K. GRIMES,
Assistant Director for Engineering & Projects, Division of Operating Reactors.

[FR Doc. 79-8177 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-1061]

OREGON STATE UNIVERSITY RESEARCH REACTOR

Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has considered the order authorizing dismantling of facility and disposition of component parts for the Oregon State University (the licensee) AGN 201 Reactor operated under Facility license No. R-51. The order authorizes the licensee to disassemble the reactor which operated at power levels up to 0.1 watts (thermal), and to dispose of the component parts.

The U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, has prepared an environmental impact appraisal for this research reactor. On the basis of this appraisal, we have concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the proposed action. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland, this 8th day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors
Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-8178 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-3441]

PORTLAND GENERAL ELECTRIC CO., THE CITY OF EUGENE, OREG., PACIFIC POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. NPF-1 issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company which revised Technical Specifications for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oregon. The amendment is effective as of its date of issuance.

The amendment modifies the required action to be taken while penetration fire barriers are non-functional, adopts diesel fuel sampling requirements for the diesel-generator day tanks, and revises the diesel fuel sampling requirements for the other diesel fuel tanks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 28, 1978, (2) Amendment No. 39 to License No. NPF-1, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 9th day of March, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-8184 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-2861]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 24 to Facility Operating License No. DPR-64, issued to Power Authority of the State of New York (the licensee), which revised the license for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility), located in Buchanan, Westchester County, New York. The amendment is effective as of its date of issuance.

The amendment adds a license condition relating to the completion of facility modifications to improve the fire protection program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact.

ronmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated December 15, 1976, March 3, 1977, April 15, 1977, June 29, 1978, October 23, 1978 and February 6, 1979, (2) Amendment No. 10 to License No. DPR-64, dated November 30, 1977, (3) Amendment No. 24 to License No. DPR-64 and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A single copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director: Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of March, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-8182 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK (JAMES A. FITZPATRICK NUCLEAR POWER PLANT)

Order to Show Cause

I.

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59 which authorizes operation of the James A. Fitzpatrick Nuclear Power Plant (the facility) at power levels up to 2436 megawatts thermal (rated power). The facility, which is located at the Licensee's site in Oswego County, New York, is a boiling water reactor used for the commercial generation of electricity.

II.

In the course of evaluation of certain piping design deficiencies in connection with the Beaver Valley Power Station, Docket 50-334, significant discrepancies were observed between the original piping analysis computer code used to analyze earthquake loads by Stone and Webster, the architect-engi-

neer for that facility, and a currently acceptable computer code developed for this purpose.

In the course of a meeting on March 8, 1979 to discuss these matters, the Beaver Valley Licensee informed the NRC staff that the difference in predicted piping stresses between the two computer codes is attributable to the fact that the piping analysis code used for a number of piping systems in that facility uses an algebraic summation of the loads predicted separately by the computer code for both the horizontal component and for the vertical component of seismic events. This incorrect treatment of such loads was not recognized at this time. Such loads should not be algebraically added (with predicted loads in the negative direction offsetting predicted loads in the positive direction) unless far more complex time-history analyses are performed. Rather, to properly account for the effects of earthquakes, as required by General Design Criterion 2 for systems important to safety, such loads should be combined absolutely or, as is the case in the newer codes, using techniques such as the square root of the sum of the squares. This conforms to current industry practice.

The inappropriate analytical treatment of load combinations discussed above becomes significant for piping runs in which the horizontal seismic component can have both horizontal and vertical components on piping systems, and the vertical seismic component also has both horizontal and vertical components. It is in these runs that the predicted earthquake loads may differ significantly.

Although the greatest differences in predicted loads would tend to be limited to localized stresses in pipe supports and restraints or in weld attachments to pipes, there could be a substantial number of areas of high stress in piping, as well as a number of areas in which there is potential for damage to adjacent restraints or supports, which could have significant adverse effects on the ability of the piping system to withstand seismic events.

The NRC staff communicated with Stone and Webster, who was also the architect-engineer for the Fitzpatrick facility, to ascertain whether the conditions identified for Beaver Valley were also applicable to Fitzpatrick. We were informed that since the same revision of the same computer code had been used for both Beaver Valley and Fitzpatrick, a similar problem may be anticipated. The NRC informed the Licensee of these facts by phone on Friday, March 9 and on Sunday, March 11, 1979.

In order to ascertain the specific systems at Beaver Valley that could be potentially affected by this error, members of the NRC staff on March

10, 11 and 12 went to the offices of Stone and Webster, the architect-engineer of both Beaver Valley and Fitzpatrick to review detailed designs and computations for some of the piping systems of principal potential concern. Concurrently, on March 9, 1979 the Beaver Valley Licensee suspended power operation of that facility. Based on this more detailed review, the NRC staff has concluded that until full reanalysis of all potentially affected piping systems important to safety has been completed with a piping analysis computer code which does not contain the algebraic summation error, the potential for serious adverse effects at the Fitzpatrick facility exists in the event of an earthquake and could be sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised.

In view of the safety significance of this matter as discussed above, the Director of the Office of Nuclear Reactor Regulation has concluded that the public health and safety requires that an orderly suspension of operation of the facility should be effected immediately and that, in order to provide adequate protection of public health and safety the facility operation should be suspended: (1) Until such time as the piping systems for all affected safety systems have been reanalyzed for earthquake events to demonstrate conformance with General Design Criterion 2 using a piping analysis computer code which does not contain the error discussed above, and (2) if such reanalysis indicates that there are components which deviate from applicable ASME Code requirements, until such deviations are rectified.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's rules and Regulations in 10 CFR Parts 2 and 50, it is hereby ordered That the Licensee show cause, in the manner hereinafter provided,

(1) Why the Licensee should not reanalyze the facility piping systems for seismic loads on all potentially affected safety systems using an appropriate piping analysis computer code which does not combine loads algebraically,

(2) Why the Licensee should not make any modifications to the facility piping systems indicated by such reanalysis to be necessary; and

(3) Why facility operation should not be suspended pending such reanalysis and completion of any required modifications.

In view of the importance to safety of this matter, as described herein, the Director of the Office of Nuclear Reactor Regulation has determined that

the public health and safety or interest require that this action be effective immediately, pending further Order of the Commission. Accordingly, within 48 hours of the receipt of this Order, the facility shall be placed in cold shutdown condition, and shall remain in such mode until further Order of the Commission.

The Licensee may, within twenty days of the date of this Order, file a written answer to this Order under oath or affirmation. Within the same time, the Licensee or any interested person may request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place for hearing. Upon failure of the Licensee to file an answer within the time specified, the Director, Office of Nuclear Reactor Regulation will, without further notice, issue an order suspending further activities under Operating License DPR-59.

In the event a hearing is requested, the issues to be considered at such hearing shall be:

Whether operation under Facility License No. DPR-59 should be suspended until (1) the piping systems for all affected safety systems are reanalyzed for earthquake events using an appropriate piping analysis computer code which does not combine seismic loads algebraically, and until (2) any modifications required to restore the system to conformance with applicable ASME Code requirements are completed.

Dated at Bethesda, Maryland this 13th day of March, 1979.

For the Nuclear Regulatory Commission.

HAROLD R. DENTON,
Director, Office of Nuclear
Reactor Regulation.

(FR Doc. 79-8169 Filed 3-16-79; 8:45 am)

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.132, Revision 1, "Site Investigations for Foundations of Nuclear Power Plants," describes investigation programs for evaluating

the safety of a site with regard to the performance of foundations and earthworks under most loading conditions, including earthquakes. This guide has been revised as a result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 12th day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of
Standards Development.

(FR Doc. 79-8186 Filed 3-16-79; 8:45 am)

[7590-01-M]

[Docket No. 50-280]

VIRGINIA ELECTRIC AND POWER CO. (SURRY POWER STATION, UNIT 1)

Order To Show Cause

I.

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR-32 which authorizes operation of the Surry Power Station, Unit 1 (the facility) at power levels up to 2441 megawatts thermal (rated power). The facility, which is located at the Licensee's site in Surry County, Virginia, is a pressurized water reactor used for the commercial generation of electricity.

II.

In the course of evaluation of certain piping design deficiencies in connection with the Beaver Valley Power Station, Docket 50-334, significant dis-

crepancies were observed between the original piping analysis computer code used to analyze earthquake loads by Stone and Webster, the architect-engineer for that facility, and a currently acceptable computer code developed for this purpose.

In the course of a meeting on March 8, 1979 to discuss these matters, the Beaver Valley Licensee informed the NRC staff that the difference in predicted piping stresses between the two computer codes is attributable to the fact that the piping analysis code used for a number of piping systems in that facility uses an algebraic summation of the loads predicted separately by the computer code for both the horizontal component and for the vertical component of seismic events. This incorrect treatment of such loads was not recognized at that time. Such loads should not be algebraically added (with predicted loads in the negative direction offsetting predicted loads in the positive direction) unless far more complex time-history analyses are performed. Rather, to properly account for the effects of earthquakes, as required by General Design Criterion 2 for systems important to safety, such loads should be combined absolutely or, as is the case in the newer codes, using techniques such as the square root of the sum of the squares. This conforms to current industry practice.

The inappropriate analytical treatment of load combinations discussed above becomes significant for piping runs in which the horizontal seismic component can have both horizontal and vertical components on piping systems, and the vertical seismic component also has both horizontal and vertical components. It is in these runs that the predicted earthquake loads may differ significantly.

Although the greatest differences in predicted loads would tend to be limited to localized stresses in pipe supports and restraints or in weld attachments to pipes, there could be a substantial number of areas of high stress in piping, as well as a number of areas in which there is potential for damage to adjacent restraints or supports, which could have significant adverse effects on the ability of the piping system to withstand seismic events.

The NRC staff communicated with Stone and Webster, who was also the architect-engineer for the Surry facility, to ascertain whether the conditions identified for Beaver Valley were also applicable to Surry. We were informed that since the same revision of the same computer code had been used for both Beaver Valley and Surry, a similar problem may be anticipated. The NRC informed the Licensee of these facts by phone on Friday, March 9 and on Sunday, March 11, 1979.

In order to ascertain the specific systems at Beaver Valley that could be potentially affected by this error, members of the NRC staff on March 10, 11 and 12 went to the offices of Stone and Webster, the architect-engineer of both Beaver Valley and Surry to review detailed designs and computations for some of the piping systems of principal potential concern. Concurrently, on March 9, 1979 the Beaver Valley Licensee suspended power operation of that facility. Based on this more detailed review, the NRC staff has concluded that until full reanalysis of all potentially affected piping systems important to safety has been completed with a piping analysis computer code which does not contain the algebraic summation error, the potential for serious adverse effects at the Surry facility exists in the event of an earthquake and could be sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised.

In view of the safety significance of this matter as discussed above, the Director of the Office of Nuclear Reactor Regulation has concluded that the public health and safety requires that an orderly suspension of operation of the facility should be effected immediately and that, in order to provide adequate protection of public health and safety the facility operation should be suspended: (1) until such time as the piping systems for all affected safety systems have been reanalyzed for earthquake events to demonstrate conformance with General Design Criterion 2 using a piping analysis computer code which does not contain the error discussed above, and (2) if such reanalysis indicates that there are components which deviate from applicable ASME Code requirements, until such deviations are rectified.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is hereby ordered That the Licensee show cause, in the manner hereinafter provided,

(1) Why the Licensee should not reanalyze the facility piping systems for seismic loads on all potentially affected safety systems using an appropriate piping analysis computer code which does not combine loads algebraically;

(2) Why the Licensee should not make any modifications to the facility piping systems indicated by such reanalysis to be necessary; and

(3) Why facility operation should not be suspended pending such reanalysis and completion of any required modifications.

In view of the importance to safety of this matter, as described herein, the Director of the Office of Nuclear Reactor Regulation has determined that the public health and safety or interest require that this action be effective immediately, pending further Order of the Commission. Accordingly, within 48 hours of the receipt of this Order, the facility shall be placed in cold shutdown condition, and shall remain in such mode until further Order of the Commission.

The Licensee may, within twenty days of the date of this Order, file a written answer to this Order under oath or affirmation. Within the same time, the Licensee or any interested person may request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place for hearing. Upon failure of the Licensee to file an answer within the time specified, the Director, Office of Nuclear Reactor Regulation will, without further notice, issue an order suspending further activities under Operating License DPR-32.

In the event a hearing is requested, the issues to be considered at such hearing shall be:

Whether operation under Facility License No. DPR-32 should be suspended until (1) the piping systems for all affected safety systems are reanalyzed for earthquake events using an appropriate piping analysis computer code which does not combine seismic loads algebraically, and until (2) any modifications required to restore the system to conformance with applicable ASME Code requirements are completed.

Dated at Bethesda, Maryland this 13th day of March, 1979.

For the Nuclear Regulatory Commission.

HAROLD R. DENTON,

Director, Office of
Nuclear Reactor Regulation.

[FR Doc. 79-8166 Filed 3-16-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON COMBINATION OF DYNAMIC LOADS

Meeting

The ACRS Subcommittee on Combination of Dynamic Loads will hold an ad hoc open meeting on April 3, 1979 in room 1046, 1717 H St., N.W., Washington, D.C. to review the technical basis of the NRC Staff Order to shut down five nuclear plants due to some safety-related piping systems being in

nonconformance with NRC requirements for withstanding earthquakes.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Tuesday, April 13, 1979, 10:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Elpidio G. Igne, (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 15, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-8330 Filed 3-16-79; 8:45 am]

[7590-01-M]

[Docket No. 50-281]

VIRGINIA ELECTRIC AND POWER CO. (SURRY POWER STATION, UNIT 2)

Order to Show Cause

I.

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR-37 which authorizes operation of the Surry Power Station, Unit 2 (the facility) at power levels up to 2441 megawatts thermal (rated power). The

facility, which is located at the Licensee's site in Surry County, Virginia, is a pressurized water reactor used for the commercial generation of electricity. The facility is presently shut down for steam generator repairs.

II.

In the course of evaluation of certain piping design deficiencies in connection with the Beaver Valley Power Station, Docket 50-334, significant discrepancies were observed between the original piping analysis computer code used to analyze earthquake loads by Stone and Webster, the architect-engineer for that facility, and a currently acceptable computer code developed for this purpose.

In the course of a meeting on March 8, 1979 to discuss these matters, the Beaver Valley Licensee informed the NRC staff that the difference in predicted piping stresses between the two computer codes is attributable to the fact that the piping analysis code used for a number of piping systems in that facility uses an algebraic summation of the loads predicted separately by the computer code for both the horizontal component and for the vertical component of seismic events. This incorrect treatment of such loads was not recognized at that time. Such loads should not be algebraically added (with predicted loads in the negative direction offsetting predicted loads in the positive direction) unless far more complex time-history analyses are performed. Rather, to properly account for the effects of earthquakes, as required by General Design Criterion 2 for systems important to safety, such loads should be combined absolutely or, as is the case in the newer codes, using techniques such as the square root of the sum of the squares. This conforms to current industry practice.

The inappropriate analytical treatment of load combinations discussed above becomes significant for piping runs in which the horizontal seismic component can have both horizontal and vertical components on piping systems, and the vertical seismic component also has both horizontal and vertical components. It is in these runs that the predicted earthquake loads may differ significantly.

Although the greatest differences in predicted loads would tend to be limited to localized stresses in pipe supports and restraints or in weld attachments to pipes, there could be a substantial number of areas of high stress in piping, as well as a number of areas in which there is potential for damage to adjacent restraints or supports, which could have significant adverse effects on the ability of the piping system to withstand seismic events.

The NRC staff communicated with Stone and Webster, who was also the architect-engineer for the Surry facility, to ascertain whether the conditions identified for Beaver Valley were also applicable to Surry. We were informed that since the same revision of the same computer code had been used for both Beaver Valley and Surry, a similar problem may be anticipated. The NRC informed the Licensee of these facts by phone on Friday, March 9 and on Sunday, March 11, 1979.

In order to ascertain the specific systems at Beaver Valley that could be potentially affected by this error, members of the NRC staff on March 10, 11 and 12 went to the offices of Stone and Webster, the architect-engineer of both Beaver Valley and Surry to review detailed designs and computations for some of the piping systems of principal potential concern. Concurrently, on March 9, 1979 the Beaver Valley Licensee suspended power operation of that facility. Based on this more detailed review, the NRC staff has concluded that until full reanalysis of all potentially affected piping systems important to safety has been completed with a piping analysis computer code which does not contain the algebraic summation error, the potential for serious adverse effects at the Surry facility exists in the event of an earthquake and could be sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised.

In view of the safety significance of this matter as discussed above, the Director of the Office of Nuclear Reactor Regulation has concluded that the public health and safety requires that the present suspension of operation of the facility should be continued: (1) until such time as the piping systems for all affected safety systems have been reanalyzed for earthquake events to demonstrate conformance with General Design Criterion 2 using a piping analysis computer code which does not contain the error discussed above, and (2) if such reanalysis indicates that there are components which deviate from applicable ASME Code requirements, until such deviations are rectified.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the Licensee show cause, in the manner hereinafter provided,

(1) Why the Licensee should not reanalyze the facility piping systems for seismic loads on all potentially affected safety systems using an appropriate piping analysis computer code

which does not combine loads algebraically;

(2) Why the Licensee should not make any modifications to the facility piping systems indicated by such reanalysis to be necessary; and

(3) Why facility operation should not be suspended pending such reanalysis and completion of any required modifications.

In view of the importance to safety of this matter, as described herein, the Director of the Office of Nuclear Reactor Regulation has determined that the public health and safety or interest require that this action be effective immediately, pending further Order of the Commission. Accordingly, the facility shall remain shut down until further Order of the Commission.

The Licensee may, within twenty days of the date of this Order, file a written answer to this Order under oath or affirmation. Within the same time, the Licensee or any interested person may request a hearing. If a hearing is requested, the Commission will issue an Order designating the time and place for hearing. Upon failure of the Licensee to file an answer within the time specified, the Director, Office of Nuclear Reactor Regulation will, without further notice, issue an order suspending further activities under Operating License DPR-37.

In the event a hearing is requested, the issues to be considered at such hearing shall be:

Whether operation under Facility License No. DPR-37 should be suspended until (1) the piping systems for all affected safety systems are reanalyzed for earthquake events using an appropriate piping analysis computer code which does not combine seismic loads algebraically, and until (2) any modifications required to restore the system to conformance with applicable ASME Code requirements are completed.

Dated at Bethesda, Maryland this 13th day of March 1979.

For the Nuclear Regulatory Commission.

HAROLD R. DENTON,
Director, Office of Nuclear
Reactor Regulation.

[FR Doc. 79-8167 Filed 3-16-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

AGENCY FORMS UNDER REVIEW

BACKGROUND

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and

NOTICES

Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

LIST OF FORMS UNDER REVIEW

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer; the office of the agency issuing this form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of forms that will be filled out; an estimate of the total number of hours needed to fill out the form; and the name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

COMMENTS AND QUESTIONS

Copies of the proposed forms may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

Department of Agriculture

(Agency Clearance Officer—Donald W. Barrowman—447-6202)

REVISIONS

Economics, Statistics, and Cooperatives Service
Chicken and Egg Report
Monthly
Egg producers
57,600 responses, 5,760 hours
Ellett, C. A., 395-5080

Department of Commerce

(Agency Clearance Officer—Edward Michaels—377-4217)

NEW FORMS

Bureau of the Census
Followup Questionnaire for the Population Coverage Check; 1980 Census
D-841(X); D-841A(X)
Single time
Households in dress rehearsal areas in CO, VA
2,700 responses, 540 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Bureau of the Census
Census Forms—1979, Puerto Rico Pretest Census
D-1PR (X)—D-1PR(X)
Single time
All Households in the pretest census area
14,000 responses, 7,000 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Industry and Trade Administration
Rubber and Plastics Protective Footwear
ITA-9020
Single time
Producers of Protective Footwear
20 responses, 10 hours
Caywood, D. P., 395-6140

Maritime Administration
Presidential Oil Pollution Insurance Study
Single time
Oil Pollution Insurance Buyers and Sellers
Caywood, D. P., 395-6140

REVISIONS

Bureau of Economic Analysis
Interim Survey of Foreign Direct Investment in the U.S.—1978
BE-15
Annually
Foreign owned U.S. business enterprises
1,500 responses, 4,500 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Bureau of the Census, Plumbing Fixtures (Production, Shipments, and Stocks)
MQ-34E
Quarterly

Manufacturers of plumbing fixtures
500 responses, 250 hours
Caywood, D. P., 395-6140

Bureau of the Census
Applicant Information, Selection Aid Validation Study
D-426
Single time
Applicants taking written test for census jobs
160,000 responses, 13,333 hours
Caywood, D. P., 395-6140

EXTENSIONS

Bureau of the Census
Backlog of Aircraft, Space Vehicles, Missiles, and Selected Parts
MQ-37D
Quarterly
Manufacturers of complete aircraft and engines
260 responses, 260 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Bureau of the Census
Aircraft Engines—Shipments
M-37C
Monthly
Civilian aircraft engine manufacturers
84 responses, 33 hours
Caywood, D. P., 395-6140

Bureau of the Census
Complete Aircraft Plant Report
M-37G
Monthly
Civilian aircraft manufacturers
312 responses, 78 hours
Caywood, D. P., 395-6140

National Oceanic and Atmospheric Administration
Recreational Fisheries Investigations
Fishing Log
NOAA 88-904
On occasion
Recreational fishermen and boat captains
10,000 responses, 333 hours
Caywood, D. P., 395-6140

Department of Health, Education, and Welfare

(Agency Clearance Officer—Peter Gness—245-7488)

NEW FORMS

Alcohol, Drug Abuse and Mental Health Administration
National Survey on Drug Abuse (Nationwide Survey)
ADM T 16-1 and ADM T 16-2
Single time
Individuals in households
6,800 responses, 5,644 hours
Richard Elsing, 395-3214
Health Care Financing Administrator (Departmental)
Evaluation of Professional Standard Review Organization Medical Care Evaluation Studies and Benefit-Cost Substudy

HCFA-90, L90, and 90A

Single time

PSRO's and hospital delegated to perform MCE studies

1,208 responses, 10,773 hours

Richard Eisinger, 395-3214

Department of Housing and Urban Development

(Agency Clearance Officer—John Kalagher—755-5184)

NEW FORMS

Policy Development and Research

A Survey of Eligible, Enrolled and Not

Paid Clients of the Housing Allowance Program

Single time

Eligible enrolled not paid households

1,300 responses, 455 hours

Strasser, A., 395-5080

National Science Foundation

(Agency Clearance Officer—Herman Fleming—634-4070)

NEW FORMS

Surveys for Study of Postdoctorals in Science and Engineering

Single time

Doctoral scientists and engineers

10,500 responses, 4,400 hours

Office of Federal Statistical Policy and Standard, 673-7974

Railroad Retirement Board

(Agency Clearance Officer—W. V. Radesk—312-751-4690)

REVISIONS

Employer's Quarterly or Annual Report of Contributions Under the RUIA

DC-1

Annually

Railroad employers

2,600 responses, 866 hours

Reese, B. F., 395-6132

Notice of Death and Statement of Compensation

AA-12

On occasion

Railroad employers

5,000 responses, 833 hours

Reese, B. F., 395-6132

Request for Medical Payment G-740

On occasion

Medicare claimant

1,300,000 responses, 216,666 hours

Reese, B. F., 395-6132

STANLEY E. MORRIS,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-8269 Filed 3-16-79; 8:45 am]

[3190-01-M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Possible Reallocation of Specialty Steel Quotas

AGENCY: Office of the Special Representative for Trade Negotiations.

ACTION: Notice of Possible Reallocation of Specialty Steel Quota Shortfalls.

SUMMARY: Written comments are solicited from interested parties on the possible reallocation, within certain quota categories, from suppliers who are not likely to export the quantity of steel which would fill the current quota assigned to them, to other suppliers who are able to supply additional steel.

DATES: Comments should be received by or before March 29, 1979.

ADDRESSES: Comments should be sent to the Secretary, Trade Policy Staff Committee, Room 728, Office of

the Special representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Karen Alleman, Room 725, Office of the special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506, (202-395-7203).

SUPPLEMENTARY INFORMATION: By Proclamation 4445 of June 11, 1976, (41 FR 24101), as modified, the President proclaimed import relief for the domestic specialty steel industry for a period of three years in the form of an Orderly Marketing Agreement with Japan and quotas on imports from other foreign suppliers. Headnote 2 of Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (TSUS) gives the Special Representative for Trade Negotiations the authority to reallocate shortfalls during the last three months of each quota year. This notice identifies likely shortfalls in relation to quota quantities for the current restraint period (June 14, 1978—June 13, 1979) as listed below:

TSUS item	Supplier	Quota quantity for 3d restraint period	Estimated charges by June 18, 1979	Potential shortfall
		In short tons		
In short tons				
923.20 (sheet and strip)	Canada.....	9,200	8,653	547
	Col. 2*.....	3	0.24	2.76
923.21 (plate).....	Canada.....	500	8	492
	Sweden.....	3,600	937	2,663
923.22 (bar).....	Col. 2*.....	2	0	2
923.26 (alloy tool steel)	Austria.....	2,385	1,901	484
	Co. 2*.....	6	0	6

* Countries entitled to the rate of duty in rates of duty column numbered 2 of the Tariff Schedules of the United States.

Estimated charges by June 13, 1979 are extrapolated from actual charges against each quota quantity through February 16, 1979.

For each of the specialty steel product categories in which likely shortfalls by some suppliers are projected, there are other suppliers who may be able to ship amounts in excess of the quotas now allocated to them and thus would benefit from any reallocations made. These suppliers are:

TSUS item	Supplier
923.20 (sheet and strip).	European Economic Community. Other Column 1 countries.

TSUS item	Supplier
923.21 (plate).....	European Economic Community. Other Column 1 countries.
923.22 (bar).....	European Economic Community. Canada. Sweden. Spain. Other Column 1 countries.
923.26 (alloy tool steel).	European Economic Community. Sweden. Other Column 1 countries.

WILLIAM B. KELLY, Jr.,

Chairman,

Trade Policy Staff Committee.

[FR Doc. 79-8142 Filed 3-16-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE
COMMISSION

[Rel. No. 20945; 70-6277]

AMERICAN ELECTRIC POWER CO., INC.

Proposal that Holding Company Act as Surety
for Operating Subsidiary

MARCH 6, 1979.

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP proposes to act as surety for Ohio Power Company ("Ohio Power"), an electric utility subsidiary of AEP, in connection with an Ohio Power rate proceeding now pending before the Public Utilities Commission of Ohio ("Ohio Commission"). On March 31, 1978, Ohio Power filed with the Ohio Commission a Notice of Intent to file new increased rates for electric service in Ohio, and filed its main rate case on June 30, 1978. It now appears probable that the Ohio Commission will be unable to complete its investigation of such rate case by March 31, 1979, the date on and after which the new rates may be made effective, subject to the posting by Ohio Power of an appropriate undertaking under Ohio statutes to insure the making of refunds in the event the Ohio Commission's final order should so require.

Ohio Power filed a form of such undertaking with the Ohio Commission in February 1979. This form has not yet been accepted by the Ohio Commission, nor has any other form of undertaking been prescribed by it. It is possible the Ohio Commission will require AEP to act as surety for Ohio Power or will require the posting of a commercial bond. If a commercial bond is required, Ohio Power may be unable to procure the same without AEP's acting as surety thereon.

The purpose of the proposed transaction is to enable Ohio Power, as permitted by Ohio law, to begin applying the new increased rates prior to the completion of the Ohio Commission's investigation, hearing and decision thereon. It is expected that the amount of the bond or surety agreement required will not exceed \$100,000,000, the approximate annual amount of additional revenue that would be collected subject to refund. AEP requests authorization to act as

surety for Ohio Power for up to \$100,000,000 as may be required by the Ohio Commission and/or a commercial bonding company in connection with the undertaking to be supplied by Ohio Power. There will be no fees or charges paid by Ohio Power to AEP in connection with such suretyship.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at \$2,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8189 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Rel. No. 20946; 70-6262]

APPALACHIAN POWER CO.

Proposed Extension of Short-Term Debt
Authorization Subsidiary

MARCH 6, 1979.

Notice is hereby given that Appalachian Power Company ("Appalachian"), 40 Franklin Road, Roanoke, Virginia 24009, an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered

holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a)(2), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Appalachian proposes to submit a proposal to its cumulative preferred stockholders for their consent and approval for an extension of the time in which the amount of unsecured short-term debt, which Appalachian is authorized to incur, may exceed 10% of Appalachian's total capitalization at any time, but which together with outstanding long-term unsecured debt securities, would not exceed 20% of Appalachian's total capitalization at any time.

The proposed extension for which authority is now being sought would commence January 1, 1980 and end December 31, 1984 and would be subject to the proviso that the principal amount of such short-term unsecured debt securities in excess of 10% of total capitalization outstanding on such date shall mature by its terms not later than June 30, 1985. The actual issue and sale of securities related to such proposed increase in short-term indebtedness will be subject to further authorization by this Commission. Appalachian presently is authorized by its preferred stockholders to issue or assume unsecured debt securities within the foregoing limit pursuant to an authorization expiring December 31, 1979.

It is stated that the increase in short-term debt is necessary to finance Appalachian's construction program, the cost of which is presently estimated to be approximately \$340,000,000 in 1979, up from approximately \$243,000,000 incurred in 1978.

Appalachian through the use of proposed solicitation material proposes to solicit proxies from its Cumulative Preferred Stockholders in regards to the 5 year unsecured debt extension at the annual meeting of shareholders of Appalachian to be held on May 16, 1979. Consent of the holders of a majority of the outstanding cumulative preferred stock, voting as a class, is needed to increase the amount of short-term unsecured indebtedness.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed transaction are estimated at \$30,000. It is stated that there are no legal fees involved in the proposed transaction.

Notice is further given that any interested person may, not later than March 29, 1979, request in writing that a hearing be held with respect to the proposed transaction, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8190 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Rel. No. 20950; 70-5668]

GENERAL PUBLIC UTILITIES CORP.

Proposal to Extend Period for Issuance and Sale of Stock Through Dividend Reinvestment and Stock Purchase Plan

MARCH 8, 1979.

Notice is hereby given that General Public Utilities Corporation ("GPU"), 260 Cherry Hill Road, Parsippany, New Jersey 07054, a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement concerning the proposed transaction.

By orders dated June 18, 1975, April 5, 1976, March 21, 1977, and March 20, 1978 (HCAR Nos. 19051, 19463, 19948 and 20458), GPU was authorized to issue and sell up to 5,341,998 shares of its common stock pursuant to its Dividend Reinvestment and Stock Purchase Plan (the "Plan"), the latest such authorization extending through June 30, 1979. GPU states that as of December 31, 1978, 2,081,213 shares had been so issued and sold.

The Plan basically provides that a shareholder may have his cash dividends invested automatically in shares of GPU common stock and/or purchase such shares through optional cash payments of up to \$3,000 per quarter. The prices of the new shares purchased with cash dividends and optional cash payments are 95% and 100%, respectively, of the average of the high and low sales prices as reported on the consolidated tape on the dividend payment date, or, if the New York Stock Exchange is closed on such date, the next preceding date on which it was open. No brokerage commissions or service charges are paid by participants in connection with purchases under the Plan. All Plan administration costs are paid by GPU.

By post-effective amendment GPU proposes that the Plan be amended to provide (a) that the prices of new shares purchased with cash dividends and with optional cash payments will be 95% and 100%, respectively, of the average of the high and low sales prices as reported on the consolidated tape for each of the five trading days ending with the dividend payment date, or, if the New York Stock Exchange is closed on such date, the next preceding date on which it was open, and (b) that the purchase of new shares through optional cash payments will be permitted to be made up to a maximum of \$6,000 in each quarter. In all other respects the Plan would remain unchanged.

GPU also requests that the period within which shares may be issued and sold pursuant to the Plan be extended until June 30, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at \$265,000, including printing expenses of \$40,000, dividend reinvestment agent fees of \$155,000 and mailing expenses of \$48,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 2, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said

post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8191 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Release No. 10622; 812-4418]

FIDELITY CASH RESERVES

Filing of an Application for an Order of Exemption

MARCH 9, 1979.

Notice is hereby given that Fidelity Cash Reserves ("Fidelity"), 82 Devonshire Street, Boston, Massachusetts 02109, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on January 11, 1979, and an amendment thereto on March 8, 1979, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Fidelity from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Fidelity to compute its net asset value per share, for the purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by Fidelity will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("Release No. 9786"). All interested persons

are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below.

Fidelity is a business trust organized under the laws of the State of Massachusetts. Fidelity filed with the Commission a registration statement on Form N-8B-1 pursuant to Section 8(b) of the Act and a registration statement on Form S-5 under the securities Act of 1933, as amended, on December 29, 1978. The 1933 Act registration statement on Form S-5 has not yet been declared effective. Thus, Fidelity has not commenced distribution of its shares.

Fidelity states that it is a "money market" fund designed as an investment vehicle for individuals, corporations, fiduciaries, and institutions with temporary cash balances or cash reserves. According to the application, Fidelity's investment objective will be to obtain as high a level of current income as is consistent with the preservation of capital and liquidity. In this regard, Fidelity proposes to invest exclusively in high-grade money market instruments consisting of (i) obligations issued guaranteed as to interest and principal by the government of the United States or any agency or instrumentality thereof; (ii) U.S. dollar-denominated time deposits, certificates of deposit and bankers acceptances of U.S. banks and their branches located outside of the U.S. and of U.S. branches of foreign banks ("bank instruments") provided that the bank issuing such bank instruments has capital, surplus and undivided profits (as of the date of its most recently published annual financial statements) in excess of \$100,000,000 (or the equivalent in the case of a foreign bank) at the date of investment; (iii) commercial paper which at the date of investment is rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Service, Inc. or, if not rated, is issued by companies which at the date of investment have an outstanding debt issue rated AAA or AA by Standard & Poor's or Aaa or Aa by Moody's; and (iv) short-term (one year or less) corporate obligations which at the date of investment are rated AAA by Standard & Poor's or Aaa or Aa by Moody's. Fidelity further proposes to enter into repurchase agreements with respect to obligations which, without regard to maturity, it is authorized to invest. In this regard, the application represents that the board of trustees of Fidelity will limit the entering into of repurchase agreements by Fidelity so that such repurchase agreements will only be entered into with financial institutions which are believed by Fidelity's investment adviser to present minimum credit risk. The application

states that Fidelity Management and Research Company will serve as investment adviser to Fidelity.

According to the application, Fidelity proposes to (i) utilize the mark-to-market method of valuing its portfolio instruments having remaining maturities in excess of 60 days; (ii) utilize the amortized cost valuation technique for valuing its portfolio instruments having remaining maturities of 60 days or less; and (iii) effect sales, redemptions and repurchases of its shares at prices calculated to the nearest one cent on a share having a nominal value of \$1.00. Fidelity will determine its net asset value per share for purposes of effecting sales, redemptions and repurchases of its shares as of the close of trading on each day the New York Stock Exchange is open for trading and, in addition, at such other times as Fidelity may determine.

Rule 22c-1 adopted under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available, and for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In Release No. 9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that (1) it is inconsistent with the provisions of Rule 2a-4 for money market funds to value their assets on an amortized cost basis except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation method is determined to be appropriate by each respective fund's board of directors, and (2) it is inconsistent with the provisions of Rule 2a-4 for money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of \$1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" such funds' proper portfolio valuation as required by Rule 2a-4. On the basis of the foregoing, Fidelity submits that without an exemption

from the provisions of Rules 2a-4 and 22c-1 under the Act Fidelity would be prohibited from determining its net asset value in the manner set forth above.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions under the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Fidelity represents that it understands that potential investors in its shares clearly have indicated that they are not concerned with the theoretical differences which might occur between the yield achieved through "market" pricing and the yield computed by using the "penny rounding" valuation method described herein. Fidelity further represents that such potential investors are vitally concerned that the net asset value of their shares remain stable and that the daily net income declared on their investment not exhibit the volatility which can often occur when changes in market prices cause changes in yield on a daily or weekly basis, and have indicated that they would be forced to forego investing in a fund which did not meet these requirements. In addition, Fidelity states that granting of the relief requested would provide its shareholders the convenience of being able to determine the value of their Fidelity shares simply by knowing the number of shares they own, and would make the task of maintaining an investment record easier.

Management of Fidelity further believes that computing the net asset value per share of Fidelity to the nearest one cent on a share value of one dollar as described above will allow the Fund to maintain a constant net asset value per share under usual or ordinary circumstances and thereby permit it to serve the interests and requirements of Fidelity's shareholders notwithstanding its use of the mark-to-market method, as opposed to the amortized cost method, of valuing its portfolio instruments having remaining maturities in excess of 60 days. The application further represents that the Trustee of Fidelity have determined in good faith that this method of calculating the net asset value per share of Fidelity, under such circumstances, is appropriate and in the best interest of Fidelity's shareholders.

Fidelity further states that its request for exemption is made based upon its existing management policies and has agreed that the following conditions may be imposed in any order granting the exemptions it has requested:

1. That the Trustees of Fidelity, in supervising Fidelity's operations and delegating special responsibilities involving portfolio management to Fidelity's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Fidelity's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Fidelity's investment objective that the price per share of Fidelity shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent will not deviate from \$1.00. Fidelity understands that its Trustees can fully carry out this undertaking by (i) requiring Fidelity's investment adviser to adopt policies calculated to prevent such price, as so rounded, from deviating from \$1.00 except under unusual or extraordinary circumstances and (ii) periodically reviewing the investment adviser's management of Fidelity pursuant to such policies at regularly scheduled meetings of the Trustees.

2. That Fidelity will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Fidelity will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. That Fidelity's purchases of portfolio instruments, including securities underlying repurchase agreements, will be limited to such high-quality instruments as are described in this application and outlined above.

For the reasons stated in its application Fidelity submits that the exemptions from the provisions of Rules 2a-4 and 22c-1 under the Act which it has requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 3, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary,

Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Fidelity at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8192 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Rel. No. 20944; 70-6264]

GRANITE STATE ELECTRIC CO. ET AL.

Proposed Short-Term Financing Arrangements and Request for Exemption Form Competitive Bidding

MARCH 6, 1979.

Notice is hereby given that New England Electric System ("NEES"), 20 Turnpike Road, Westborough, Massachusetts 01581, a registered holding company, and its electric utility subsidiaries Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), and New England Power Company ("NEP") have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 42, 45(b)(1), 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Applicant-declarants request authorization to make short-term borrowings from the period April 1, 1979, to March 31, 1980, pursuant to the arrangements set forth below, in the following individual maximum aggregate amounts outstanding at any one time: Granite, \$2,000,000; Mass Electric, \$25,000,000; Narragansett, \$27,000,000 and NEP, \$78,000,000. The borrowings will be made from the banks indicated

below and/or NEES, and Mass Electric and NEP also propose to issue notes to dealers in commercial paper. The maximum amount of short-term borrowings sought by Mass Electric and NEP (\$25,000,000 and \$78,000,000, respectively) from banks or NEES will be reduced by the amount of its commercial paper outstanding at that time.

Borrowing company	Proposed maximum loans from banks or NEES (in thousands)
Granite:	
The First National Bank of Boston.....	\$2,000
Mass Electric:	
The First National Bank of Boston.....	19,000
Guaranty Bank & Trust Company.....	500
Mechanics National Bank.....	500
Bay Bank Middlesex.....	2,000
South Shore National Bank.....	500
Worcester County National Bank.....	2,500
Total Mass Electric.....	\$25,000
Narragansett:	
Industrial National Bank of Rhode Island.....	10,000
The First National Bank of Boston.....	9,000
Rhode Island Hospital Trust National Bank.....	6,000
Peoples Bank and Trust Company.....	1,000
Old Stone Bank.....	1,000
Total Narragansett.....	\$27,000
NEP:	
Bank of America.....	1,000
Baybank Newton-Waltham Trust Co.....	1,000
Brown Brothers Harriman and Company.....	1,000
Chase Manhattan Bank.....	5,000
Chemical Bank.....	3,500
Citibank, N. A.....	10,000
Continental Illinois National Bank and Trust Company.....	5,000
The First National Bank of Boston.....	15,000
The First National Bank of Chicago.....	3,000
Irving Trust Company.....	8,000
Manufacturers Hanover Trust.....	5,000
Morgan Guaranty Trust Company.....	5,000
National Bank of North America.....	2,000
New England Merchants National Bank.....	4,000
Shawmut Bank of Boston, N. A.....	4,000
State Street Bank and Trust Company.....	3,000
Worcester County National Bank.....	2,500
Total NEP.....	\$78,000

The \$78,000,000 authorization sought by NEP will be reduced by the net proceeds from the contemplated issuance and sale of \$50,000,000 of bonds during the fourth quarter of 1979 or early in 1980.

The proposed borrowings from banks and/or NEES will be evidenced by notes maturing in less than one year from date of issuance and will provide for prepayment in whole or in part without premium. The borrowings from banks require compensating balances (or fees in lieu thereof) and will bear interest at a rate not in excess of the prime rate in effect at the time the borrowings are made. The notes issued to NEES will bear in-

terest at a rate not in excess of the prime rate in effect at the time the borrowings are made. Based upon compensating balance requirements of 20% (or fees equivalent thereto), the effective interest cost would be approximately 14.7% per annum, assuming an 11.75% prime rate. The effective interest cost on borrowings from NEES would be the prime rate.

It is proposed that the borrowing companies may prepay their notes to NEES, in whole or in part, with borrowings from banks or from the sale of commercial paper, and that their borrowings from banks may be prepaid, in whole or in part, with borrowings from NEES or from the sale of commercial paper. In the event bank borrowings or commercial paper sales are made at a higher interest cost than NEES borrowings in order to prepay notes issued to NEES, NEES will credit the borrowers with the differential interest from the date of issuance of the bank notes or commercial paper to the normal maturity date of the notes to NEES being prepaid. In the event of borrowings from NEES to prepay notes to banks, the interest rate of the notes issued to NEES will be the lower of (1) the interest rate on the notes being prepaid (but only to the maturity date of the notes so prepaid, and thereafter at the prime rate in effect at the time the new notes were issued), or (2) the prime rate in effect.

Mass Electric and NEP propose to issue and sell commercial paper through March 31, 1980, directly to Lehman Commercial Paper, Inc., and/or A. G. Becker & Co., Inc., and/or Salomon Brothers (collectively, the "Dealers"), dealers in commercial paper. The Dealers, as principals, will reoffer the commercial paper to not more than 100 of their respective customers whose names appear on non-public lists of institutional investors. Prior to or concurrently with the offerings, the customers will be furnished current financial and other information with respect to the issuer. It is expected that such commercial paper will be held to maturity by the purchasers, but if a purchaser wishes to resell prior to maturity, the Dealer involved will repurchase the paper for resale to others on its list of customers. The commercial paper to be issued and sold will be in the form of unsecured promissory notes having a maturity not in excess of 270 days, will be in denominations of between \$50,000 and \$1,000,000, and will be purchased from the Dealers at a discount which will not be in excess of the discount rate per annum prevailing at the date of issue for commercial paper of comparable quality and maturity of public utility issuers sold to commercial paper dealers. The Dealers will initially reoffer the commercial paper at a

discount rate not more than $\frac{1}{8}$ of 1% per annum less than the prevailing discount rate to the issuer. The effective interest cost to the issuer of such paper will not exceed the effective cost at the time of issuer for borrowings from The First National Bank of Boston, except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of the effective interest cost of borrowings from such bank.

The proceeds from the proposed borrowings will be used to pay then-outstanding short-term notes initially issued to banks, dealers in commercial paper and/or NEES at or prior to maturity, to provide funds for capitalizable expenditures or to reimburse the borrowing company's treasury for prior expenditures therefor.

It is stated that Mass Electric, Narragansett and NEP have each been authorized by its preferred shareholders to issue short-term unsecured indebtedness up to 20% of the sum of its principal amount of all bonds and other secured indebtedness plus capital, premium and retained earnings. NEP's authorization exists through July 1, 1980 (HCAR No. 19595, dated June 30, 1976); Mass Electric's exists through August 1, 1980 (HCAR No. 19097, dated August 29, 1975); and Narragansett's exists through July 19, 1979 (HCAR No. 18505, dated July 19, 1974) (it is contemplated that a continuation thereof will be sought by separate application).

NEES and Mass Electric request an exemption from the competitive bidding requirements of Rule 50 for their proposed issuance and sale of commercial paper to Dealers pursuant to Rule 50(a)(5) on the ground that it is not practicable to sell commercial paper by competitive bidding.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at \$3,500, including \$1,500 of services to be performed at cost by New England Power Service Company, an affiliate of applicants-declarants. It is stated that the New Hampshire Public Utilities Commission has jurisdiction over the issuance of short-term notes by Granite and NEP and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should

order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8193 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Release No. 20951; 70-6244]

LOWELL GAS CO. AND CAPE COD GAS CO.

Proposed Issuance and Sale of Common Stock to Parent by Subsidiaries and Issuance and Sale of First Mortgage Bonds to Institutional Investors Pursuant to a Private Offering; Request for Exception for Competitive Bidding

MARCH 9, 1979.

Notice is hereby given that Colonial Gas Energy System ("Colonial"), 95 East Merrimack Street, Lowell, Massachusetts 01853, a registered holding company, Lowell Gas Company ("Lowell"), and Cape Cod Gas Company ("Cape Cod"), P.O. Box 1360, Hyannis, Massachusetts 02601, public utility subsidiaries of Colonial, have filed a joint declaration designating Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder regarding the issuance and sale of subsidiary common stocks to Colonial and the private placement of subsidiary first mortgage bonds with institutional lenders. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in

that proceeding, dated January 26, 1978, Colonial agreed that, pending development of a plan of recapitalization and Commission action on its exemption application, it and its subsidiaries would comply with the standards of Sections 6, 7 and 12(b) of the Act, and Colonial registered as a holding company for that purpose.

Pursuant to a Stock Purchase Agreement (the "Petrolane Agreement") dated as of November 1, 1978 with Petrolane-Northeast Gas Service, Inc., an unaffiliated corporation, Colonial on November 30, 1978 transferred all of the outstanding shares of common stock in its wholly-owned subsidiary, Gas Incorporated ("Gas Inc."), to Petrolane for a consideration of \$2,750,000 in cash. Under the Agreement, Colonial warranted the net worth of the propane operations of Gas Inc. to be at least \$2,150,000 as of November 1, 1978, and agreed to refund the purchase price on a dollar-for-dollar basis to the extent of any deficiency.

The common stock of Gas Inc. was pledged to secure repayment of loans made to Colonial by John Hancock Mutual Life Insurance Company and the Travelers Insurance Company (the "Lenders") under a Purchase Agreement dated March 29, 1974. The Lender's consent to the transactions contemplated by the Petrolane Agreement and the release of Gas Inc.'s common stock from the pledge was conditioned upon Colonial investing the proceeds to be received from the sale of the common stock of Gas Inc., less costs associated with that transaction, in additional shares of common stock of Lowell and Cape Cod. The exact amount of such proceeds will not be known until the completion of an audit of Gas Inc., as provided for in the Petrolane Agreement.

Cape Cod and Lowell are seeking authorization to issue and sell up to 67,500 and 48,000 shares of common stock to Colonial for a maximum aggregate purchase price of \$899,775 and \$1,000,400, respectively. The price per

share proposed is \$13.33 for Cape Cod and \$20.50 for Lowell. In the case of Lowell which has a minority interest, the price was established by reference to the average of the bid and asked prices of the stock in the open market over the past three months and by reference to price/earnings ratios and price/book value ratios of other comparable gas distribution companies. It is stated that the proceeds from the sale of the stock will be used to repay indebtedness incurred for or to reimburse each company for construction expenditures.

Authorization is also being sought for the private placement of up to \$1,250,000 of Lowell's first mortgage bonds and up to \$1,250,000 of Cape Cod's first mortgage bonds. The proposed sale of bonds is dependent upon the contemplated additional investment in subsidiary common stocks.

The gas subsidiaries' capital structure, adjusted as of December 31, 1978, and pro forma, is shown in the following table.

(Dollars in millions)

	Lowell				Cape Cod			
	Adjusted*		Pro forma		Adjusted*		Pro forma	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Long-term debt.....	\$24,499	48.2	\$26,299	51.7	\$13,214	47.5	\$14,214	51.2
Notes payable: banks.....	7,028	13.8	4,228	8.3	4,106	14.8	2,206	7.9
Total debt.....	31,527	62.0	30,527	60.0	17,320	62.3	16,420	59.1
Preferred stock.....	4,528	8.9	4,528	8.9	1,560	5.6	1,560	5.6
Common equity.....	14,821	29.1	15,821	31.1	8,909	32.1	9,809	35.3
Total capitalization.....	50,876	100.0	50,876	100.0	27,789	100.0	27,789	100.0

*Includes \$4,900,000 of Lowell's first mortgage bonds and \$3,150,000 of Cape Cod's first mortgage bonds sold pursuant to authorization of this Commission by order dated January 9, 1979 (HCAR No 20880) and corresponding reduction in bank debt.

It is contemplated that the bonds will be issued under each company's indenture of mortgage and deed of trust, as amended and supplemented, and will be of equal rank with the outstanding bonds. The terms of the bonds will be filed by amendment. It is stated that the proceeds from the sale of the bonds will be used to repay indebtedness incurred for or to reimburse each company for construction expenditures.

Lowell and Cape Cod request an exception under Rule 50(a)(5) from competitive bidding. They represent that compliance with Rule 50(b) is not appropriate stating that no fees, commissions or remuneration are to be paid in connection with the private sale of the bonds except filing fees and legal fees. The bonds presently outstanding are

held by institutional investors. The companies state that a public offering is inappropriate because of the size of the issues, the size of the companies, and the fact that they are relatively unknown in the security markets. The companies propose, and are hereby authorized, forthwith, to negotiate with underwriters. The actual negotiated terms, subject to further authorization, will be supplied by amendment.

The fees and expenses incurred for or to be incurred in connection with this proposal will be filed by amendment. The Massachusetts Department of Public Utilities has jurisdiction over the proposed issue and sale of common stock and first mortgage bonds by Lowell and Cape Cod. No other state commission or federal commission, except this Commission, has jurisdiction over such transactions.

Notice is further given that any interested person may, not later than April 2, 1979, to request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or

as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8194 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Release No. 20952; 70-5840]

MIDDLE SOUTH UTILITIES, INC.

Post-Effective Amendment Regarding Issuance and Sale of Additional Common Stock Pursuant to a Dividend Reinvestment and Stock Purchase Plan

MARCH 9, 1979.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans Louisiana 70112, a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By orders in this proceeding dated May 20, 1976, and April 3, 1978 (HCR Nos. 19538 and 20480), Middle South was authorized to issue and sell from time to time through June 30, 1981, a maximum of 1,000,000 shares of its authorized but unissued common stock, \$5 par value, pursuant to a Dividend Reinvestment and Stock Purchase Plan ("Plan"). Middle South has issued and sold 712,912 of the 1,000,000 shares so authorized.

Middle South now proposes to issue and sell, under the terms of the Plan, an additional 1,500,000 shares of its common stock ("Additional Common Stock") through June 30, 1981. Middle South intends to apply the proceeds from the sale of the Additional Common Stock toward the payment of any short-term notes outstanding

from time to time and to other corporate purposes.

Under the terms of the Plan, all holders of record of shares of common stock of Middle South may elect to invest their regular cash dividends and/or optional cash payments in the Additional Common Stock. The purchase price of the Additional Common Stock will be the average of the daily high and low sale prices of the common stock of Middle South, based on consolidated trading ("Consolidated Trading") as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, for the period of the last three days on which the common stock of Middle South was traded immediately preceding the day on which dividends and/or optional cash payments are to be invested.

Morgan Guaranty Trust Company of New York ("Bank") administers the Plan and makes purchases of shares as agent for the participants. Shares of common stock purchased under the Plan are registered in the name of the Bank (or its nominee), as agent for participants in the Plan, and credited to the account of the participant. Each participant in the Plan receives a statement of his account following each purchase of shares. Middle South reserves the right to suspend, modify (subject to Commission approval), or terminate the Plan at any time.

Participants in the Plan may (a) have cash dividends on all of their shares of common stock automatically reinvested, or (b) have cash dividends on less than all of their shares of common stock automatically reinvested and continue to receive cash dividends on their remaining shares, or (c) continue to receive their cash dividends on shares registered in their names and invest by making optional cash payments of not less than \$25 per payment nor more than \$5,000 per quarter, or (d) invest both their cash dividends and such optional cash payments. No service charge or commission is paid by participants in connection with purchases under the Plan. Optional cash payments are invested on a monthly basis. The Plan permits participation, by special authorization form, in the Plan by record holders on behalf of certain beneficial owners.

Participants retain all voting rights relating to shares purchased under the Plan and credited to their accounts, and shares are voted in accordance with the instructions of the participant to whose account they are credited. A participant may withdraw from the Plan at any time upon written notice. Upon withdrawal, the participant is issued, without charge, a certificate for the number of shares credited to his account and receives a cash

payment for the value of any fractional share. Alternatively, a participant may, upon withdrawal, request that all shares credited to his account in the Plan be sold, and such sale is then made for the participant by the Bank. Without withdrawing from the Plan, a participant is entitled to demand and receive a certificate representing the whole shares of common stock credited to his account.

The amended application-declaration states that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed transaction are estimated at \$200,000 including legal fees of \$18,000. Middle South has requested that the issuance and sale of the Additional Common Stock be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof.

Notice is further given that any interested person may, not later than April 2, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8195 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Rel. No. 20949; 70-6266]

OHIO EDISON CO. AND PENNSYLVANIA
POWER CO.Proposed Financing for Pollution Control
Facilities

MARCH 8, 1979.

Notice is hereby given that Ohio Edison Company ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44308, an electric utility company and a registered holding company, and its electric utility subsidiary Pennsylvania Power Company ("Penn Power"), 1 East Washington Street, New Castle, Pennsylvania 16103, have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12(d) of the Act and Rules 44(b)(3) and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement concerning the proposed transactions.

Ohio Edison and Penn Power have been engaged in on-going programs designed to finance the costs of construction of pollution control equipment installed or being installed at various generating units that they own or in which they have an interest. These programs entail the issuance and sale of pollution control revenue bonds by appropriate government instrumentalities, the proceeds from which sales are made available to pay construction costs.

Under Pennsylvania statutes the Beaver County Industrial development Authority ("Beaver Authority") and the Lawrence County Industrial Development Authority ("Lawrence Authority") are each authorized to enter into agreements concerning the construction and financing by them of industrial development projects (including pollution control facilities) and the sale thereof to industrial occupants (including public utilities).

Ohio Edison and Penn Power, together with The Cleveland Electric Illuminating Company, Duquesne Light Company and The Toledo Edison Company (collectively, the "CAPCO companies") have entered into an agreement with the Beaver Authority ("Beaver Agreement") concerning the acquisition, construction and financing of pollution control facilities at the Bruce Mansfield Plant, a three unit coal-fired plant owned by the CAPCO companies as tenants in common. Under present allocations with respect to such plant, Ohio Edison owns 60% of Unit No. 1, 39.3% of Unit No. 2 and 35.6% of Unit No. 3, and Penn Power owns 4.2% of Unit No. 1, 6.8% of Unit No. 2 and 6.28% of Unit No. 3. Under

the Beaver Agreement, the Beaver Authority is to issue and sell, separately with respect to each of the CAPCO companies and upon the request of that company, Beaver Authority pollution control bonds in order to finance the cost of the acquisition and construction of that company's interest in pollution control facilities at the Bruce Mansfield Plant. With respect to Ohio Edison, the Beaver Authority has heretofore issued and sold four series of such bonds which are presently outstanding (\$35,000,000 principal amount issued June 21, 1973; \$19,000,000 principal amount issued September 24, 1974; \$40,000,000 principal amount issued August 26, 1976; and \$26,500,000 issued April 14, 1977). A fifth series (\$24,825,000 principal amount issued May 29, 1975) was refunded and is no longer outstanding. With respect to Penn Power, the Beaver Authority has heretofore issued and sold four series of such bonds which are presently outstanding (\$3,500,000 principal amount issued June 21, 1973; \$2,500,000 principal amount issued November 26, 1974; \$5,000,000 principal amount issued August 26, 1976; and \$3,500,000 principal amount issued April 14, 1977). A fifth series (\$2,750,000 principal amount issued May 29, 1975) was refunded and is no longer outstanding.

It is now proposed that an additional series of bonds ("Series F Bonds") be issued with respect to Ohio Edison and Penn Power by the Beaver Authority in aggregate principal amounts of \$50,000,000 and \$10,000,000, respectively. The proceeds of each company's Series F Bonds will be used to finance that company's share of costs associated with the construction of pollution control facilities at the Bruce Mansfield Plant. The Series F Bonds with respect to Ohio Edison and with respect to Penn Power will be issued pursuant to indentures supplemental to separate trust indentures between the Beaver Authority and The Cleveland Trust Company, Trustee, dated as of June 1, 1973. The Series F Bonds will not be redeemable at the option of the Beaver Authority, upon direction of the company with respect to which they were issued, for ten years after issuance, except upon the happening of certain extraordinary events as set forth in the relevant indenture. Except as to any differences in dates of issuance, maturities, rates of interest or provisions for redemption by sinking fund or otherwise, the terms of the Series F Bonds will correspond to those of the prior series of bonds issued under the same indenture. The terms will in each case require the approval of the company with respect to which the bonds are to be issued. The Series F Bonds are expected to be marketed pursuant to ar-

rangements between the Beaver Authority and underwriters yet to be selected, to which arrangements neither Ohio Edison nor Penn Power will be a party.

Under the Beaver Agreement the company with respect to which the Beaver Authority issues bonds is required to transfer to the Beaver Authority its respective interest in the pollution control facilities being financed, subject to the lien of its first mortgage indenture. Such interests will be reconveyed to the transferor company not later than the completion of construction of the pollution control facilities involved.

Concurrently with the issuance and delivery of the Series F Bonds, the company with respect to which such series is being issued will execute and deliver to the Beaver Authority a separate pollution control obligation in the form of a note. Each such note will be secured by a second lien on the appropriate company's interest in the facilities being financed by the particular Series F Bonds to which the note is related. Principal and interest due on such notes will correspond as to dates of payment, amounts and interest rate with the rates of interest, times of payment, stated maturities and sinking fund payments, if any, of the Series F Bonds to which the note is related. Each such note will provide, among other things, that amounts due thereunder must be paid whether or not the pollution control facilities being financed are completed, or function satisfactorily, or are damaged or destroyed.

Penn Power has also entered into an agreement with the Lawrence Authority ("Lawrence Agreement") concerning the acquisition, construction and financing of pollution control facilities at Penn Power's wholly owned New Castle Plant. Under the Lawrence Agreement, the Lawrence Authority is to issue and sell its pollution control revenue bonds in order to finance the cost of acquisition and construction of such facilities at the New Castle Plant. The Lawrence Authority has heretofore issued and sold three such series of bonds, all of which are presently outstanding (\$15,000,000 principal amount and \$1,000,000 principal amount, both issued June 23, 1976, and \$10,600,000 principal amount issued December 20, 1977).

It is now proposed that an additional series of bonds ("Series C Bonds") be issued by the Lawrence Authority in an aggregate principal amount of \$3,000,000. The proceeds will be used to finance the costs associated with the construction of pollution control facilities at the New Castle Plant. The Series C Bonds will be issued pursuant to an indenture supplemental to the trust indenture between the Lawrence

Authority and the First National Bank of Lawrence County, Trustee, dated as of June 1, 1976. The Series C Bonds will not be redeemable at the option of the Lawrence Authority, upon the direction of Penn Power, for ten years after issuance, except upon the happening of certain extraordinary events as set forth in the indenture. Except as to any differences in dates of issuance, maturity, rate of interest and provisions for redemption by sinking fund or otherwise, the terms of the Series C Bonds will correspond to those of the prior series of bonds issued under the same indenture. A term will require Penn Power's approval of the terms of the Series C Bonds. The Series C Bonds are expected to be marketed pursuant to arrangements between the Lawrence Authority and underwriters to be selected, to which arrangements Penn Power will not be a party.

Under the Lawrence Agreement Penn Power is required to transfer to the Lawrence Authority its interest in the pollution control facilities being financed, subject to the lien of its first mortgage indenture. Such interest will be reconveyed to Penn Power not later than the completion of construction of such facilities.

Concurrently with the issuance and delivery of the Series C Bonds, Penn Power will execute and deliver to the Lawrence Authority a separate pollution control obligation in the form of a note, which will be secured by a second lien on Penn Power's interest in the pollution control facilities at the New Castle Plant. Principal and interest due on this note will correspond as to dates of payment, amounts and interest rate with the rates of interest, times of payment and sinking fund payments, if any, of the Series C Bonds. The note will provide, among other things, that amounts due thereunder must be paid whether or not the pollution control facilities being financed are completed, or function satisfactorily, or are damaged or destroyed.

Although the Series F Bonds with respect to Ohio Edison, the Series F Bonds with respect to Penn Power and the Series C Bonds will be marketed together in order to effect cost savings, each series will be issued separately, and the issuance of any one series is not dependent upon the issuance of either or both of the other series. While the Beaver Authority and the Lawrence Authority will be the issuer of its respective bonds, as required in order to make the interest income thereon exempt from federal income taxation, the credit of neither Authority will be pledged to the payment of its bonds.

The proceeds from the sales of the Series F Bonds with respect to Ohio

Edison, the Series F Bonds with respect to Penn Power and the Series C Bonds will be placed in separate escrow accounts for use in connection with the acquisition, construction and financing of the pollution control facilities to which they relate.

Applicants-declarants request exemption from the competitive bidding requirements of Rule 50 for the issuance of their pollution control notes pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that the Public Utilities Commission of Ohio has jurisdiction over the proposed transactions with respect to Ohio Edison, that the Pennsylvania Public Utilities Commission has jurisdiction over the proposed transactions with respect to Penn Power and that no other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

Notice is further given that any interested person may, not later than April 2, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8196 Filed 3-16-79; 8:45 am]

[8010-01-M]

[Rel. No. 20948; 70-6270]

**SOUTHWESTERN ELECTRIC POWER CO. AND
CENTRAL AND SOUTH WEST CORP.**

**Proposed Capital Contribution by Holding
Company to Subsidiary**

MARCH 6, 1979.

Notice is hereby given that Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75250, a registered holding company and Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, one of CSW's electric utility subsidiaries, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9, 10, and 12(f) of the Act and Rules 43 and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to make a \$15,000,000 capital contribution to SWEPCO. The capital contribution will be added to SWEPCO's common stock paid-in surplus account and will be used to repay short-term debt incurred in connection with its 1979 construction expenditures. As of March 15, 1979, short-term debt for SWEPCO will be approximately \$35,000,000. SWEPCO estimates that its construction expenditures for 1979 will be \$130,000,000.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated at \$2,250, including legal fees of \$200.

Notice is further given that any interested person may, not later than March 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided

in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8197 Filed 3-16-79; 8:45 am]

[8010-01-M]

THE NATIONAL MARKET ADVISORY BOARD

Continuation of Advisory Committee; Opportunity for Public Comment

The Securities and Exchange Commission is conducting a review of its Federal advisory committee as directed by the President and the Office of Management and Budget. In connection with that review, we invite comments from interested members of the public on the need for and the performance of this SEC advisory committee.

The one SEC advisory committee is:

THE NATIONAL MARKET ADVISORY BOARD

On December 30, 1977, the Charter of the National Market Advisory Board was amended so as to continue the Board's existence as an entity after the expiration of the terms of its then current members (December 31, 1977) so that the Commission may appoint members in the future should it be deemed appropriate.

The Advisory Board's objectives are to:

(1) Formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States;

(2) Study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system; and

(3) Study the possible need for modification of the scheme of self-regulation so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization, a National Market Regulatory Board, to administer the national market system. In the event

the Advisory Board determines that a National Market Regulatory Board should be established it shall make recommendations as to:

(a) The point in time at which a Regulatory Board should be established;

(b) The composition of a Regulatory Board;

(c) The scope of the authority of a Regulatory Board;

(d) The relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

(e) The manner in which a Regulatory Board should be funded.

Persons wishing to comment on the above advisory committee should submit written statements in triplicate to George A. Fitzsimmons, Advisory Committee Management Officer, Room 892, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should be specific in nature. Comments should be received no later than March 31, 1979. The Commission will consider and where appropriate will forward comments to the Office of Management and Budget.

Questions concerning the review may be directed to George A. Fitzsimmons (202) 755-1160.

Dated: March 9, 1979.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8200 Filed 3-16-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

REGION III ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:00 a.m., on Thursday, April 5, 1979, at the Sheraton Inn, 153 West Main Street, Clarksburg, to discuss such matters as may be presented by members, the staff of the Small Business Administration, or others present.

For further information, write or call Arthur J. Glick, District Director, U.S. Small Business Administration, 109 North Third Street, Clarksburg, West Virginia 26301—(304) 622-6601

Dated: March 13, 1979.

K DREW,
*Deputy Advocate for
Advisory Councils.*

[FR Doc. 79-8093 Filed 3-16-79; 8:45 am]

[8025-01-M]

REGION V ADVISORY COUNCIL

Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Columbus, Ohio, will hold a public meeting on Thursday, April 12, 1979, from 9:00 a.m. until 2:00 p.m., at the Imperial House—Arlington, 1335 Dublin Road, Columbus, Ohio, to discuss such business as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215—(614) 469-7310.

Dated: March 13, 1979.

K DREW,
*Deputy Advocate for
Advisory Councils.*

[FR Doc. 79-8094 Filed 3-16-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1589]

OREGON

Declaration of Disaster Loan Area

Crook and Umatilla Counties and adjacent counties within the State of Oregon constitute a disaster area as a result of damage resulting from flooding caused by runoff of snow melt and rain which occurred on February 6-10, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7% percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 14, 1979, and for economic injury until the close of business on December 13, 1979 at:

Small Business Administration, District Office, Federal Building—Room 676, 1220 S.W. Third Avenue, Portland, Oregon 97204.

or other locally announced locations. (Catalog of Federal Domestic Assistance program Nos. 59002 and 59008).

Dated: March 13, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-8250 Filed 3-16-79; 8:45 am]

NOTICES

[8025-01-M]

REGION III ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region III advisory Council, located in the geographical area of Washington, D.C., will hold a public meeting at 10:00 a.m., on Wednesday, April 11, 1979, at the Lee House, 1100-15th Street, N.W., Washington, D.C., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Frank H. Proudfoot, U.S. Small Business Administration, 1030-15th Street, N.W., Suite 250, Washington, D.C. 20417—(202)653-6960.

Dated: March 13, 1979.

K DREW,
Deputy Advocate for
Advisory Councils

[FR Doc. 79-8248 Filed 3-16-79; 8:45 am]

[8025-01-M]

REGION VIII ADVISORY COUNCIL EXECUTIVE BOARD MEETING

Public Meeting

The Small Business Administration Region VIII Advisory Council Executive Board will hold a public meeting at 9:00 a.m. on Wednesday, April 11, 1979, in the Small Business Administration Conference Room, 22nd Floor, Executive Tower Building, 1405 Curtis Street, Denver, Colorado, to discuss such business as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call Dean Lupkey, Regional Director, U.S. Small Business Administration, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202—(303) 837-4021.

Dated: March 13, 1979.

K DREW,
Deputy Advocate for
Advisory Councils.

[FR Doc. 79-8249 Filed 3-16-79; 8:45 am]

[4710-01-M]

DEPARTMENT OF STATE

[Public Notice CM-8/172]

FINE ARTS COMMITTEE

Meeting

The Fine Arts Committee of the Department of State will hold its Spring meeting on Thursday, May 24, 1979 at 9:30 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:00 a.m.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 13, 1978, the announcement of all gifts and loans since December 1, 1978, as well as a final report on the architectural improvements in the Entrance Hall and Elevator Lobby of the Diplomatic Reception Rooms. Also on the agenda will be a report from the dinner Committee on the Fund raising dinner to be held in September 1979.

The meeting is open to the public. The public may take part in the discussion as long as time permits and at the discretion of the Chairman. Because of State Department security requirements, anyone wishing to attend the meeting should telephone the fine Arts Office by Monday, May 14, 1979, telephone (202) 632-0298 to make arrangements to enter the building.

Dated: March 9, 1979.

CLEMENT E. CONGER,
Chairman,
Fine Arts Committee.

[FR Doc. 79-8100 Filed 3-16-79; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR TRAFFIC PROCEDURES ADVISORY COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee to be held April 9 through April 12, 1979, from 9 a.m. E.D.T. to 4 p.m. daily, in conference rooms 6A and B at FAA Headquarters, 800 Independence Ave., S.W., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Mr. Franklin L. Cunningham, Executive Director, Air Traffic Procedures Advisory Committee, Air Traffic Service, ATT-300, 800 Independence Ave., S.W., Washington, D.C. 20591, telephone (202) 426-3725.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on March 12, 1979.

F. L. CUNNINGHAM,
Executive Director, ATPAC.

[FR Doc. 79-7740 Filed 3-16-79; 8:45 am]

[4910-06-M]

Federal Railroad Administration

[FRA Emergency Order No. 11—Notice 5]

Administrative Hearing on Emergency Order Limiting Movement of Hazardous Materials

On February 7, 1979, the Federal Railroad Administration (FRA) issued Emergency Order No. 11 placing certain restrictions on the movement of railroad freight cars containing materials required to be placarded in accordance with DOT regulations, 49 CFR Parts 170-189, over track owned or leased by the Louisville and Nashville Railroad Company (L&N) (44 FR 8402). That Order was subsequently amended on February 16, 1979 (44 FR 10559).

Under the authority of 45 U.S.C. 432 and 49 CFR 211.47, the L&N requested an administrative hearing on Emergency Order No. 11, as amended, on February 28, 1979.

On March 19, 1979, an administrative hearing on that Order will commence, at 9:30 a.m., in a hearing room to be announced, at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20462. The Honorable Samuel Kanell will be the presiding officer at that hearing.

Further information concerning this matter may be obtained by contacting Kenneth Gradia, Office of Chief Counsel, Federal Railroad Administration (202-426-8220) or Judge Kanell (202-275-3934).

Issued in Washington, D.C., on March 15, 1979.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 79-8301 Filed 3-15-79; 2:32 pm]

[4910-60-M]

Materials Transportation Bureau

DENISON, INC. ET AL.

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions

or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, the nature of application have been shown in earlier FEDERAL REGISTER publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes by April 2, 1979.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Application No.	Applicant	Renewal of exemption
2587-X...	Denison, Inc., Fredonia, Kan..	2587
2805-X...	Dow Chemical U.S.A., Midland, Mich.	2805
3134-X...	Hooker Chemical Co., Houston, Tex.	3134
3353-X...	Kerr-McGee Chemical Corp., Oklahoma City, Okla.	3353
4354-X...	PPG Industries, Inc., Pittsburgh, Pa.	4354
5662-X...	Dow Chemical U.S.A., Midland, Mich.	5662
6007-X...	Nuclear Products Co., So. El Monte, Calif.	6007
6016-X...	Southern Welding Supply Co., Inc., Bowling Green, Ky.	6016
6443-X...	Montana Sulphur & Chemical Co., Billings, Mont. (See Footnote 1).	6443

Application No.	Applicant	Renewal of exemption
6497-X...	FMC Corp., Philadelphia, Pa. (See Footnote 2).	6497
6583-X...	Phillips Petroleum Co., Bartlesville, Okla.	6583
6618-X...	Monsanto Co., St. Louis, Mo...	6618
6752-X...	Pennwalt Corp., Philadelphia, Pa. (See Footnote 3).	6752
6757-X...	Degussa, Frankfurt, West Germany.	6757
6923-X...	Dow Chemical Co., Findlay, Ohio.	6923
6939-X...	Warren Petroleum Co., Tulsa, Okla.	6939
6958-X...	Dow Chemical Co., Findlay, Ohio.	6958
7005-X...	Transcontainer Leasing, S.A., Geneva, Switzerland.	7005
7249-X...	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	7249
7261-X...	Monsanto Co., St. Louis, Mo. (See Footnote 4).	7261
7269-X...	U.S. Department of Energy, Washington, DC.	7269
7286-X...	Liquid Carbonic Corp., Chicago, Ill.	7286
7440-X...	Roux Laboratories, Inc., Jacksonville, Fla.	7440
7446-X...	Kaiser Aluminum & Chemical Corp., Erie, Pa.	7446
7590-X...	Pacific Intermountain Express Co., Walnut Creek, Calif.	7590
7590-X...	Gordons Transports, Inc., Memphis, Tenn.	7590
7628-X...	Chemtech Industries, Inc., St. Louis, Mo.	7628
7744-X...	Dow Corning Corp., Midland, Mich. (See Footnote 5).	7744
7765-X...	Carleton Controls Corp., East Aurora, N.Y. (See Footnote 6).	7765
7769-X...	Brunswick Corp., Lincoln, Neb. (See Footnote 7).	7769
7871-X...	Atlas Powder International Ltd., Miami, Fla.	7871
7938-X...	Transcontainer Leasing, S.A., Geneva, Switzerland.	7938

¹To renew and provide for various modifications to appurtenances to existing cargo tanks.

²To include furadan 80 wettable powder and furadan 85 wettable powder as additional commodities.

³To modify two existing trailers under DOT-E 6752 by adding 8 more tubes to each for the shipment of difluoroethylene.

⁴To renew and to accommodate shipments of phosphorus sludge residue in smaller capacity storage tanks.

⁵To substitute an excess flow valve for the internal shut-off valve on cargo tanks in anhydrous hydrogen chloride service.

⁶To authorize an increase in sphere size from 40 cubic inches to 55 inches and an increase in service pressure not to exceed 8000 psig instead of 7100 psig.

⁷To renew and substantially increase the water capacity of the cylinders.

Application No.	Applicant	Parties to exemption
3630-P...	MC/B Manufacturing Chemists, Inc., Cincinnati, Ohio.	3630
4453-P...	Mountain State Bit Service, Inc., Morgantown, W.Va.	4453
6253-P...	Charente Steamship Company Limited, London, England.	6253
6921-P...	Cities Service Co., Tulsa, Okla.	6921
7024-P...	Cone Mills Corp., Greensboro, NC.	7024

Application No.	Applicant	Parties to exemption
7052-P...	Hercules Inc., Wilmington, Del.	7052
7654-P...	Fisher Scientific Co., Fair Lawn, N.J.	7654
7753-P...	FMC Corp., Philadelphia, Pa..	7753
7887-P...	Flight Systems Inc., Raytown, Mo (See Footnote 1).	7887
7887-P...	Small Sounding Rocket Systems, Mountlake Terrace, Wash.	7887
7887-P...	Composite Dynamics, North Las Vegas, Nev.	7887
7983-P...	Sanyo Electric Inc., Little Ferry, N.J.	7983
8047-P...	Transcontainer Leasing, S.A., Geneva, Switzerland.	8047
8062-P...	Ford Motor Co., Dearborn, Mich.	8062

¹To become a party to the exemption and to authorize an increase in propellant weight, to not exceed 62.5 grams.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on March 9, 1979.

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials
Regulation, Materials Transportation Bureau.

[FR Doc. 79-8033 Filed 3-16-79; 8:45 am]

[4910-60-M]

DEPARTMENT OF DEFENSE ET AL.

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted February 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo-vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8095-N	DOT-E 8095	U.S. Department of Defense, Bethesda, Md.	49 CFR 172.402(a), 173.65	To ship a radioactive Class A explosive in DOT Specification 7A containers. (Modes 1, 2.)
8115-N	DOT-E 8115	Acurex Corp., Mountain View, Calif.	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell a limited number of non-DOT specification FRP seamless aluminum cylinders for shipment of compressed air for underwater test purposes. (Modes 1, 2, 3, 4, 5.)
8120-N	DOT-E 8120	Starflight Inc., Memphis, Tenn.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b); 49 CFR Part 107.	To transport Class A, B and C explosives of a type or quantity not permitted for air shipment in 49 CFR Parts 170-178. (Mode 4.)

EMERGENCY EXEMPTIONS

APPLICATIONS RECEIVED AND GRANTED

EE7621-X	DOT-E 7621	Great Lakes Chemical Corp., West Lafayette, Ind.	49 CFR 173.353, 173.357	To ship chloropicrin, liquid in a non-DOT specification portable tank. (Modes 1, 2, 3.)
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DENIALS

6611-X—Request by Air Products and Chemicals, Inc., Allentown, Pa.—For reconsideration of denial of application to modify portions of DOT Exemption 6611, denied February 26, 1979.

7060-P—Request by NRG Scientific Inc., Bayse, Va.—To become a party to Exemption 7060 for shipment of radioactive materials in small aircraft with certain exceptions, denied February 26, 1979.

8026-N—Request by Oscar E. Erickson, Inc., Richmond, Calif.—to transport corrosive and flammable materials in non-DOT specification cargo tanks, denied February 13, 1979.

8112-N—Request by IRECO Chemicals, Salt Lake City, Utah—To authorize the transportation of nitro carbo nitrate and ammonium nitrate through the Port of Gulfport, Mississippi, denied February 9, 1979.

EE8161-N—Request by Carib West Airways Limited, Miami, Fla.—For an emergency exemption to transport a shipment of high explosives (shaped charges) to an overseas destination, denied February 8, 1979.

Sincerely,

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials
Regulation, Material Transportation Bureau.

[FR Doc. 79-8034 Filed 3-16-79; 8:45 am]

[4910-60-M]

DEPARTMENT OF DEFENSE ET AL.
Grants and Denials of Applications for Exemptions

RENEWALS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1479-X	DOT-E 1479	U.S. Department of Defense, Washington, DC.	49 CFR 173.315(a)(1)	To ship a nonflammable compressed gas in non-DOT specification cargo tanks. (Mode 1.)
2000-X	DOT-E 2000	Union Carbide Corp., Tarrytown, NY	49 CFR 172.101, 173.304(a)(2), 173.316(a)(2).	To ship flammable liquefied compressed gases in a non-DOT specification portable tank or a DOT Specification 4L cylinder. (Mode 1.)
3126-P	DOT-E 3126	Hercules Inc., Wilmington, Del.	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	To become a party to Exemption 3126. (See Application No. 3126-X). (Mode 1.)
3193-X	DOT-E 3193	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	49 CFR 173.314(c), 173.315(a)(1)	To ship liquefied compressed gases in DOT Specification 105A300-W, 105A500-W, Class 106A tank car tanks, MC-330 and MC-331 cargo tanks, and DOT-51 portable tanks. (Modes 1, 2, 3.)
3687-X	DOT-E 3687	Groendyke Transport, Inc., Enid, Okla.; Phillips Petroleum Co., Bartlesville, Okla.	49 CFR 173.315(a)	To ship a flammable liquefied compressed gas in a DOT Specification MC-330 cargo tank. (Mode 1.)
4453-X	DOT-E 4453	Maynes Explosives Co., Lee's Summit, Mo.	49 CFR 173.182(c)	To ship an oxidizer in a non-DOT specification bulk, hopper-type tank. (Mode 1.)
4490-X	DOT-E 4490	Air Products and Chemicals, Inc., Allentown, Pa.	49 CFR 173.316(a)	To ship a flammable gas in a non-DOT specification vacuum insulated cargo tank designed and constructed in accordance with Section VIII of the ASME Code. (Mode 1.)
4684-X	DOT-E 4684	Honeywell, Inc., Minneapolis, Minn.	49 CFR 173.202, 173.206, 175.3	To ship liquid sodium and potassium in valve actuators individually packed in a non-DOT fiberboard container. (Modes 1, 2, 4.)
4717-X	DOT-E 4717	Northern Petrochemical Co., Des Plaines, Ill.; El Paso Products Co., Odessa, Tex.; Union Carbide Corp., Bound Brook, N.J.	49 CFR 172.101, 173.314(c)	To ship a flammable liquefied compressed gas in a non-DOT specification, insulated tank car tank designed and constructed to comply with the AAR proposed specification 113D120W. (Mode 2.)
5186-X	DOT-E 5186	Liquid Carbonic Corp., Chicago, Ill.	49 CFR 172.101, 173.315	To ship a flammable liquefied compressed gas in a non-DOT specification cargo tanks. (Mode 1.)

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted January 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo-vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWALS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5649-X	DOT-E 5649	Great Lakes Chemical Corp., Adrian, Mich.	49 CFR 173.154(a)	To ship an oxidizer in non-DOT specification polypropylene or polyethylene bags overpacked in fiberboard boxes. (Modes 1, 2.)
5704-X	DOT-E 5704	IMC Chemical Group, Inc., Allentown, Pa.; U.S. Department of Defense Washington, DC.	49 CFR 173.93(e), 173.62	To ship certain Class A and B explosives in DOT and non-DOT specification metal drums. (Modes 1, 2, 3.)
5895-X	DOT-E 5895	Explosive Technology, Fairfield, Calif.	49 CFR 173.100(cc), 173.104(b), 175.3	To ship a Class C explosive in non-DOT specification inner containers overpacked in a DOT 12H fiberboard box. (Modes 1, 2, 3, 4.)
5995-X	DOT-E 5995	Roper Plastics, Inc., Oakbrook, Ill.	49 CFR 173.154(a), 172.101	To manufacture, mark and sell non-DOT specification removable head polyethylene containers for shipment of certain organic peroxides. (Modes 1, 2, 3.)
6016-X	DOT-E 6016	Airco Welding Products, Springfield, N.J.; O. E. Meyer & Sons, Inc., Sandusky, Ohio; Wilson Welding Supply, Warren, Mich.; Acety-Arc, Inc., Paduch, Ky.; Harvey Co., Greensburg, Pa.; Guttman Supply Co., Belle Vernon, Pa.; Weller Welding Co., Inc., Dayton, Ohio.	49 CFR 173.315(a)	To ship certain non-flammable gases in non-DOT specification portable tanks. (Mode 1.)
6293-X	DOT-E 6293	Olin Corp., East Alton, Ill.	49 CFR 173.245(a)(31), 173.21(b)	To ship certain corrosive liquids in DOT Specification MC-311 or MC-312 tank motor vehicle. (Mode 1.)
6334-X	DOT-E 6334	Allied Chemical Corp., Morristown, N.J.	49 CFR 172.101, 172.504	To ship an oxidizer in DOT Specification MC-312, MC-330 or MC-331 cargo tanks. (Mode 1.)
6369-X	DOT-E 6369	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	49 CFR 172.101, 173.346(a)(10), 173.347(a)(2), 173.352(a)(4), 173.374(a)	To ship certain Class B poisonous liquids in DOT Specification 105A400W, 112A400W, 114A400W, 120A300W and proposed 120A400W tank car tanks. (Mode 2.)
6392-X	DOT-E 6392	Northern Petrochemical Co., Des Plaines, Ill.; El Paso Products Co., Odessa, Tex.	49 CFR 172.101, 173.314(c)	To ship a liquefied flammable compressed gas in a non-DOT specification vacuum insulated tank car tank designed and constructed to comply with AAR proposed specification 113C120W. (Mode 2.)
6484-X	DOT-E 6484	International Minerals and Chemical Corp., Mundelein, Ill.	49 CFR 172.101	To ship flammable liquids in MC-307 or MC-312 tank motor vehicles. (Mode 1.)
6518-X	DOT-E 6518	Union Carbide Corp., Bound Brook, N.J.	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154	To ship a flammable liquid or solid in non-DOT specification steel portable tanks. (Mode 1, 3.)
6543-X	DOT-E 6543	The Synthatron Corp., Edgewater, N.J.; M & T Chemicals, Inc., San Francisco, Calif.	49 CFR 173.135(a)(6), 173.136(a)(5), 173.247, 175.3	To ship certain corrosive liquid and certain flammable liquids in non-DOT specification stainless steel cylinders. (Modes 1, 2, 4.)
6610-X	DOT-E 6610	Oxirane Chemical Co., Pasadena, Tex.	49 CFR 173.221	To ship an organic peroxide in DOT Specification 111A100W6 tank cars and MC-307 cargo tanks. (Modes 1, 2.)
6611-P	DOT-E 6611	Cities Service Co., Tulsa, Okla. L'Air Liquide, Paris, France L'Air Liquide Belge, Liege, Belgium.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6611. (See Application No. 6611-X). (Modes 1, 3.)
6632-X	DOT-E 6632	Roper Plastics, Inc., Oakbrook, Ill.	49 CFR 173.217(a)	To manufacture, mark and sell non-DOT removable-head polyethylene containers for shipment of certain oxidizing materials. (Modes 1, 2, 3.)
6657-P	DOT-E 6657	Kelsey Welding Supply Corp., New Berlin, Wis.	49 CFR 173.34(e)(15)(i), 175.3	To become a party to Exemption 6657. (See Application No. 6657-X). (Modes 1, 2, 3, 4, 5.)
6672-X	DOT-E 6672	Chandler Evans, Inc., West Hartford, Conn.	49 CFR 173.302(a)(4), 175.3	To manufacture, mark and sell non-DOT specification cylinders for shipment of certain nonliquefied compressed gases. (Modes 1, 2, 4.)
6793-X	DOT-E 6793	Trafpak Limited, Aylesbury, England; Containers and Pressure Vessels Ltd., Monaghan, Ireland.	49 CFR 173.119, 173.125, 173.245, 173.247, 173.346, 173.347; 46 CFR 90.05-35, 98.35-3	To ship hazardous materials in a non-DOT specification portable tank. (Modes 1, 2, 3.)
6802-X	DOT-E 6802	Fitch Industrial and Welding Supply, Lawton, Okla.; Lincoln Welding Supply Co., Lincoln, Neb.; Harvey Co., Greensburg, Pa.	49 CFR 173.315(a)	To ship certain nonflammable liquefied compressed gases in a non-DOT specification cargo tanks. (Mode 1.)
6815-X	DOT-E 6815	Mobay Chemical Corp., Kansas City, Mo.	49 CFR 173.359	To ship a poison B liquid in DOT Specification MC-312 tank motor vehicle. (Mode 1.)
6894-X	DOT-E 6894	U.S. Department of Defense, Washington, DC.	49 CFR 173.302(a)(1)	To ship certain nonliquefied gases in a non-DOT specification pressure vessel assembly. (Modes 1, 2.)
6901-X	DOT-E 6901	Monsanto Co., St. Louis, Mo.	49 CFR 173.28(m), 173.365(a)(2)	To ship certain Class B poisonous solids in reconditioned DOT Specification 17E steel drums. (Mode 1.)
6939-X	DOT-E 6939	Warren Petroleum Co., Tulsa, Okla.	49 CFR 173.315(a)(1), (c)(1)	To ship a flammable gas in a DOT Specification MC-331 tank motor vehicle. (Mode 1.)
6969-X	DOT-E 6969	Fairbanks Memorial Hospital, Fairbanks, Alaska; Providence Hospital, Anchorage, Alaska.	14 CFR 121.574(a), 135.114(a); 49 CFR 175.85(a), (e)	To become a party to Exemption 6969. (See Application No. 6969-X). (Mode 5.)
7277-X	DOT-E 7277	Structural Composites Industries, Inc., Azusa, Calif.	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification aluminum lined FRP cylinders for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
7413-X	DOT-E 7413	Chilton Metal Products Division, Chilton, Wis.	49 CFR 173.304(a)	To manufacture, mark and sell non-DOT specification brazed steel cylinders for shipment of carbon dioxide, liquefied. (Modes 1, 2, 4.)

RENEWALS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7543-X	DOT-E 7543	Monsanto Co., St. Louis, Mo	49 CFR 173.154	To ship a flammable solid in DOT Specification 56 portable tanks. (Mode 1.)
7600-X	DOT-E 7600	Lubbock Manufacturing Co., Lubbock, Tex.	49 CFR 172.101, 173.315(a)(1)	To manufacture, mark and sell non-DOT specification insulated cargo tanks for shipment of a flammable gas. (Mode 1.)
7620-X	DOT-E 7620	W. P. Butterfield (Engineers) Ltd., Shipley West Yorkshire, England; Eastern Mediterranean (Containers) Co., Ltd., London, England.	46 CFR 90.05-35; 49 CFR Part 173.	To ship hazardous materials in a non-DOT specification portable tank. (Modes 1, 3.)
7650-X	DOT-E 7650	ICI Americas, Inc., Wilmington, Del	49 CFR 173.315	To ship certain nonflammable compressed gases in non-DOT Specification portable tanks. (Modes 1, 3.)
7677-X	DOT-E 7677	San Diego Gas and Electric Co., San Diego, Calif.	49 CFR 172.101, 173.354(a)	To ship a flammable gas in a non-DOT specification truck mounted portable tank. (Mode 1.)
7752-X	DOT-E 7752	Hugonnet, S.A., Paris, France	46 CFR 90.05-35; 49 CFR Part 173.	To ship certain hazardous materials in non-DOT specification IMCO Type 2 insulated portable tanks. (Modes 1, 2, 3.)
7765-X	DOT-E 7765	Carleton Controls Corp., East Aurora, N.Y.	49 CFR 173.302(a)(4), 175.3	To ship a nonflammable gas in non-DOT specification spheres. (Modes 1, 2, 4.)
7840-X	DOT-E 7840	Douglas Aircraft Co., Long Beach, Calif.	49 CFR 173.87, 175.3, 176.83	To ship Class C explosive and a nonflammable compressed gas in DOT Specification 3AA2100 steel cylinder. (Modes 1, 2, 3, 4, 5.)
7876-X	DOT-E 7876	Ashland Chemical Co., Columbus, Ohio	49 CFR 173.299(a)	To ship corrosive materials described as etching acid, liquid. (Modes 1, 2, 3, 4.)
7881-X	DOT-E 7881	FMC Corp., Philadelphia, Pa	49 CFR 173.245b(a)(4), (a)(7)	To authorize stowage of sodium sulfide, shipped as a corrosive solid, under deck. (Mode 3.)
8077-X	DOT-E 8007	Dependable Welding Service, Berkeley, Calif.	49 CFR 173.136(a)(3), 173.247(a)(7)	To manufacture, mark and sell non-DOT specification steel drums for shipment of corrosive materials and flammable liquids. (Modes 1, 2.)

NEW EXEMPTIONS

7939-N	DOT-E 7939	Lea-Ronal, Inc., Freeport, N.Y	49 CFR 173.346(a)(20), 175.3	To ship certain Class B poisonous liquids in DOT Specification 37M cylindrical steel overpack with inside DOT Specification 2SL polyethylene container. (Modes 1, 2, 4.)
8046-N	DOT-E 8046	Degussa Central Transport Department, Frankfurt, Germany.	49 CFR 173.247	To ship certain corrosive liquids in non-DOT specification portable tank. (Modes 1, 2, 3.)
8055-N	DOT-E 8055	NL Industries, Inc., New York, N.Y	49 CFR 173.154	To ship a certain flammable solid in DOT Specification 44C multiwall paper bag. (Modes 1, 2, 3.)
8056-N	DOT-E 8056	Hapag-Lloyd AG, Hamburg, Germany	49 CFR Part 173; 46 CFR 90.05-35.	To ship certain flammable, corrosive, Class B poisonous and combustible liquids and oxidizing materials in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8057-N	DOT-E 8057	Hapag-Lloyd AG, Hamburg, Germany	49 CFR Part 173; 46 CFR 90.05-35.	To ship certain flammable, corrosive, Class B poisonous and combustible liquids and oxidizing materials in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8072-N	DOT-E 8072	Mobay Chemical Corp., Kansas City, Mo.	49 CFR 173.377(b)(6)	To ship organic phosphate compound mixtures in DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3.)
8078-N	DOT-E 8078	Aerojet Solid Propulsion Co., Sacramento, Calif.	49 CFR 172.101(b)(6); 175.3	To ship a rocket motor, Class B explosive, exceeding the weight limitation presently authorized by cargo-only aircraft. (Mode 4.)
8078-P	DOT-E 8078	National Aeronautics and Space Administration, Greenbelt, Md.	49 CFR 172.101(b)(6); 175.3	To become a party to Exemption 8078. (See Application No. 8078-N). (Mode 4.)
8084-N	DOT-E 8084	Ireco Chemicals, Salt Lake City, Utah	49 CFR 173.65(a)(5)	To ship high explosives with no liquid explosive ingredient nor any chlorate, containing over 5% moisture, in laminated plastic tubes overpacked in wooden or fiberboard boxes. (Mode 1.)
8091-N	DOT-E 8091	Western Electric Co., Inc., Greensboro, N.C.	49 CFR Parts 100-177	To ship mercury relays excepted from the majority of the regulations. (Modes 4, 5.)
8096-N	DOT-E 8096	Pressure-Pak Container Co., East Hampton, Conn.	49 CFR 173.302(a)(1), 175.3, 178.42	To manufacture, mark and sell non-DOT specification steel cylinders made in compliance with DOT Specification 3E with certain exceptions. (Modes 1, 2, 3, 4, 5.)
8098-N	DOT-E 8098	Witco Chemical Corp., Richmond, Calif.	49 CFR 173.157	To transport benzoyl peroxide, wet in DOT Specification 21C fiber drums. (Modes 1, 2, 3.)
8101-N	DOT-E 8101	U.S. Department of Defense, Washington, D.C.	49 CFR 173.392(c)(7)	To ship rocket ammunition, class B explosive containing depleted uranium, in the same outside container with packages of Class A explosives, without displaying the "radioactive" placards. (Mode 1.)
8111-N	DOT-E 8111	U.S. Department of Energy, Washington, D.C.	49 CFR 173.304(a)	To ship a nonflammable gas mixture in non-DOT specification cylinders. (Modes 1, 2, 3, 4, 5.)

EMERGENCY EXEMPTIONS
APPLICATIONS RECEIVED AND GRANTED

EE8138-N	DOT-E 8138	Metropolitan Sewer District, Louisville, Jefferson County, Ky.	49 CFR 173.365	To ship a Class B poison waste sludge in non-DOT specification metal boxes. (Mode 1.)
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RENEWALS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2709-X	DOT-E 2709	U.S. Department of Defense, Washington, D.C.	49 CFR 173.52, 177.834(L)(1)	To ship a Class A explosive in non-DOT specification drums. (Mode 1.)
3095-X	DOT-E 3095	Dow Chemical Co., Midland, Mich.	49 CFR 173.119(b), 173.263, 173.245.	To ship certain corrosive liquids and flammable liquids in non-DOT specification cargo tank motor vehicles. (Modes 1, 3.)
3330-X	DOT-E 3330	Babcock and Wilcox Co., Lynchburg, Va.; General Electric, Schenectady, N.Y.	49 CFR 173.214(d)	To ship a flammable solid in insulated containers overpacked in a DOT Specification 17C, 17H, or 37A metal drum. (Modes 1, 2.)
4612-P	DOT-E 4612	Aldrich Chemical Co., Inc., Milwaukee, Wis.	49 CFR Part 173	To become a party to Exemption 4612. (See Application No. 4612-X). (Mode 1.)
5792-X	DOT-E 5792	Northern Petrochemicals Co., Des Plaines, Ill.; Chemplex Co., Rolling Meadows, Ill.	49 CFR 172.101, 173.314(c)	To ship a flammable liquefied compressed gas in AAR proposed specification 113D60W tank cars. (Mode 2.)
5959-P	DOT-E 5959	Mobil Chemical Co., Beaumont, Tex.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 5959. (See Application No. 5959-X). (Mode 1.)
6083-X	DOT-E 6083	Stauffer Chemical Co., Westport, Conn.	49 CFR 172.101, 173.273, 175.3	To ship a corrosive material in any DOT specification cylinder except those prescribed for acetylene. (Modes 1, 2, 4.)
6281-X	DOT-E 6281	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	49 CFR 172.101, 173.272(a)(5)	To ship certain corrosive liquids in DOT specification MC-311 or MC-312 cargo tanks. (Mode 1.)
6418-X	DOT-E 6418	Dow Chemical Co., Midland, Mich.	49 CFR 173.357(b)	To ship Class B poisonous liquids in DOT Specification MC-303, MC-304, MC-306 or MC-307 steel cargo tanks. (Mode 1.)
6944-X	DOT-E 6944	U.S. Department of Defense, Washington, D.C.	49 CFR 173.69(a), 177.834(L)(1).	To ship a certain Class A explosive in non-DOT specially designed stainless steel desiccators. (Mode 1.)
7052-P	DOT-E 7052	Battery Engineering, Inc., Newton, Mass.; Jet Propulsion Laboratory, Pasadena, Calif.	49 CFR 172.101, 173.302(e)(1), 175.3.	To become a party to Exemption 7052. (See Application No. 7052-Z). (Modes 1, 2, 3, 4.)
7063-X	DOT-E 7063	Hooker Chemicals and Plastics Corp., Niagara Falls, N.Y.	49 CFR 173.91(a)	To ship a corrosive material in a non-DOT single-trip, removable-head polyethylene container. (Modes 1, 2, 3.)
7076-X	DOT-E 7076	LaMotte Chemical Products Co., Chertown, Md.	49 CFR 173.286(b)	To ship certain corrosive liquids and flammable liquids in inside polyethylene containers as chemical kits. (Modes 1, 2, 3.)
7435-X	DOT-E 7435	Ross Aviation, Inc., Albuquerque, N. Mex.	49 CFR 172.101, 172.204(c)(3), 173.27, 173.304(a)(1), 175.320(b); 49 CFR Part 107.	To transport a type or quantity of Class A and Class B explosives that are not permitted for shipment by air in 49 CFR Parts 172 through 178. (Mode 4.)
7574-X	DOT-E 7574	Remmers-Tomkins Flight Service, Inc., Burlington, Iowa.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b); 49 CFR Part 107.	To transport a type or quantity of Class A, B, and C explosives that are not permitted for shipment by air in 49 CFR Parts 172 through 178. (Mode 4.)
7773-X	DOT-E 7773	Valley Chemical Co., Greenville, Miss.; Kerr-McGee Chemical Corp., Oklahoma City, Okla.	49 CFR 173.358, 173.359	To ship certain Poison B liquids in a DOT Specification MC-312 cargo tank. (Mode 1.)
7938-X	DOT-E 7938	Eurotainer, Paris, France; Lowaco, S.A., Geneva, Switzerland; Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France.	49 CFR Part 173	To ship certain flammable, corrosive, Class B poisonous and combustible liquids and ORM-A materials in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8000-X	DOT-E 8000	Fauvet-Girel, Paris, France	49 CFR Part 173	To ship certain flammable, corrosive, irritating, Class B poison and combustible liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8116-X	DOT-E 8116	U.S. Environmental Protection Agency, Cincinnati, Ohio.	49 CFR Parts 100-199	To ship small quantities of several liquid hazardous materials in special type composite packagings. (Modes 1, 2, 3, 4, 5.)

NEW EXEMPTIONS

8021-N	DOT-E 8021	Degussa, Frankfurt, Germany	49 CFR 173.119	To ship methyl methacrylate, a flammable liquid, in non-DOT specification portable tanks. (Modes 1, 3.)
8023-N	DOT-E 8023	Acurex Corp., Mountain View, Calif.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.336(a)(2), 175.3.	To manufacture, mark and sell non-DOT specification seamless FRP aluminum cylinders for shipment of various compressed gases and other hazardous materials. (Modes 1, 2, 3, 4, 5.)
8060-N	DOT-E 8060	Ugine Kuhlmann, Paris, France	49 CFR 173.315(a)	To ship certain nonflammable, liquefied gases in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8067-N	DOT-E 8067	Container Corporation of America, Wilmington, Del.	49 CFR 173.272(g)	To manufacture, mark and sell DOT Specification 34 polyethylene containers for shipment of sulfuric acid. (Modes 1, 2, 3.)
8071-N	DOT-E 8071	Ethyl Corp., Baton Rouge, La.	49 CFR 173.206	To ship sodium potassium alloy in DOT Specification 51 portable tanks. (Modes 1, 2, 3.)
8079-X	DOT-E 8079	Container Corporation of America, Wilmington, Del.	49 CFR 178.35a-1	To manufacture, mark and sell inside polyethylene containers having material properties deviating from DOT Specification 2SL for shipment of certain hazardous materials. (Modes 1, 2, 3.)

6538-X Request by Wonder Corporation of America, Stamford, Conn.—To allow the placing of three notches in the top of the cylinder manufactured under the terms of DOT-E 6538, denied January 23, 1979, as being unnecessary.

6672-X Request by U.S. Department of Defense, Washington, D.C.—To renew the exemption for shipment of certain non-liquefied compressed gases in non-DOT specification cylinders, denied January 23, 1979.

7914-X Request by Southern Pacific Transportation Co., San Francisco, Calif.—For reconsideration of denial of application to allow operation of unit tank car trains of petroleum crude oil without buffer cars, denied January 19, 1979.

8066-X Request by International Marketing Associates, New York, N.Y.—To transport certain devices as toy caps without the Class C explosives label applied to the outside packaging, denied January 30, 1979.

8135-N Request by Schlumberger Well Services, Houston, Tex.—To transport charged oil well jet perforating guns by air when highway or water transportation is not available, denied January 30, 1979.

EE8143-N Request by LNG Services, Inc., Pittsburgh, Pa.—For an emergency exemption to make one shipment of liquefied natural gas in a tank motor vehicle, denied January 25, 1979.

EE8160-N Request by Uniroyal, Inc., Middlebury, Conn.—For an emergency exemption for a 90-day extension of the shelf coupler retrofit deadline for eight tank cars in vinyl chloride monomer service, denied January 31, 1979.

WITHDRAWALS

6349-P Request by Georgia-Pacific Corp., Newport Beach, Calif.—To become a party

to Exemption 6348 for shipment of certain dry oxidizing materials in non-DOT specification polyethylene container, withdrawn January 22, 1979.

6530-X Request by Burdett Oxygen Co., Norristown, Pa.—To ship certain flammable gases in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders, withdrawn January 22, 1979.

8117-N Request by U.S. Department of Defense, Washington, D.C.—To ship ammunition for cannon, Class A or B explosive, containing depleted uranium in non-DOT specification containers in other than exclusive use vehicles, withdrawn January 30, 1979.

NOTE.—Inadvertently omitted from the 44 FR 23 publication of Exemptions issued during December 1978 is the following:

7884-N Request by Suburban Airservice, Inc., Laurel, Md.—To carry radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50 and/or the separation criteria cannot be met, denied December 27, 1978.

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials
Regulation, Materials Transportation Bureau.

[FR Doc. 79-8035 Filed 3-16-79; 8:45 am]

[4910-60-M]

WESTINGHOUSE ELECTRIC CORP. ET AL.

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein.

DATES: Comment period closes April 16, 1979.

ADDRESSED TO:

Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street, S.W., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

NEW APPLICATION—Continued

Application No.	Applicant	Regulation(s) affected	Nature of application
8164-N	Westinghouse Electric Corp., Athens, Ga.	49 CFR 173.66(c)(d)	To authorize shipment of blasting caps (arresters) integral to a cylindrical device surrounded by plastic and overpacked in a non-DOT specification fiberboard container. (Modes 1, 2, 3.)
8165-N	Pressure Pak Container Co., Inc., East Hampton, Conn.	49 CFR 173.302(a)(1), 175.3, 178.42.	To manufacture, mark and sell a non-DOT Specification welded cylinder patterned after DOT Specification 3E for shipment of compressed gases. (Modes 1, 2, 3, 4.)
8166-N	International Minerals and Chemicals Corp., Mundelein, Ill.	49 CFR 173.163(a)(6)	To authorize shipment of sodium chlorate, wet with 10 percent or more of water in DOT Specification MC-306, MC-307, and MC-312 cargo tanks. (Mode 1.)
8167-N	Manostat Corp., New York, N.Y.	49 CFR 173.244(a)(1), 173.287(b)(4).	To authorize shipment of chromic acid solution in six one fluid ounce glass bottles with screw caps packed in an expanded polystyrene container four of which are overpacked in a non-DOT specification fiberboard box. (Modes 1, 2, 3, 4.)
8168-N	Container Corporation of America, Wilmington, Del.	49 CFR 173.217, 173.245(b)	To manufacture, mark and sell non-DOT specification fully removable head polyethylene drums of 30 or 55 gallon rated capacity for the shipment of certain corrosive solids and solid oxidizers. (Modes 1, 2, 3.)
8169-N	Hercules Inc., Wilmington, Del.	49 CFR 177.835(g)(2)(i)	To authorize shipment of electric blasting caps exceeding the limitation of 14 grains each imposed by the IME Standard No. 22. (Modes 1, 2.)

NEW APPLICATION—Continued

Application No.	Applicant	Regulation(s) affected	Nature of application
8170-N	ESB Ray-O-Vac, Portage, Wis.	49 CFR 173.154(a)(1)	To authorize shipment of an oxidizing material, n.o.s. in a non-DOT specification removable head 30 gallon, 16 gage stainless steel container enclosed in a wire basket. (Mode 1.)
8171-N	Abercom Investments Ltd., London, England.	49 CFR 173.118, 173.119, 173.245, 173.346.	To authorize shipment of various liquid hazardous materials in non-DOT specification IMCO Type 2 portable tanks. (Modes 1, 2, 3.)
8173-N	Champion Chemical Inc., Houston, Tex.	46 CFR 64.9; 49 CFR 173.245	To authorize shipment of various corrosive liquids, n.o.s. in marine portable tanks. (Modes 1, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on March 9, 1979.

J. R. GROTHE,
Chief, Exemptions Branch, Office of
Hazardous Materials Regulation,
Materials Transportation Bureau.

[FR Doc. 79-8032 Filed 3-16-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety
Administration

[Docket No. IP77-12; Notice 2]

FLXIBLE CO.

Denial of Petition for Inconsequential
Noncompliance

This notice denies the petition by the Flxible Company of Delaware, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1581 et seq.) for an apparent noncompliance with 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on September 22, 1977, and an opportunity afforded for comment (42 FR 47908).

Flxible informed NHTSA that approximately 1535 of its transit and suburban buses of 31, 35 and 40-foot lengths, manufactured from March 1976 through April 1977, may not comply with paragraph S5.3.4 of Standard No. 121. That section, titled Brake Release Time, requires in pertinent part that:

With an initial service brake chamber air pressure of 95 psi, the air prepressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.55 seconds (sic) in the case of trucks and buses

Flxible has discovered that the release times of a certain front brake configuration averaged 1.1676 seconds.

The problem occurred in this manner. When bus stopping distance requirements were temporarily suspended as of January 6, 1976 (41 FR 1598), on buses manufactured thereafter, Flxible disabled the antilock capability of the Rockwell-Standard Skid-Trol valve used in the air brake system. The Skid-Trol valve also performed the relay valve and quick release valve functions. Subsequently, Flxible returned to its pre-Standard No. 121 air distribution method, which employed, in part, "a straight 'T' brake hose fitting in the front." In testing on a standard production 40-foot bus taken from the assembly line, Flxible discovered that the release times for the front brakes using the conventional "T" fitting averaged 1.167 seconds.

In Flxible's opinion the nonconformance is inconsequential because "there has been no indication that the slower release time has been the direct cause or has contributed to an unsafe condition." The company further pointed out that:

... the braking system, without automatic antilock, involved herein has been tested as meeting the 121 specified service stopping distances without leaving a 12-foot lane and without lockup, criteria which by 121 appear to establish an acceptable level of directional stability and maneuverability.

There were no comments on the petition.

The brake release time as measured by Flxible averages 1.167 seconds. The standard requires a release time not to exceed 0.55 second. While the difference between the two, .617 second, may appear insignificant, it represents a release time that exceeds the maximum allowable by over 100 percent. It is on the order of magnitude of driver reaction time, and could significantly affect vehicle performance, particularly on a roadway surface affording poor traction such as a wet roadway. It is also to be noted that the vehicles concerned are in daily use in transporting the public, and are likely to be so used for many years. A high level of safety is therefore required of these vehicles and their operators.

Petitioner has not met its burden of persuasion that the noncompliance reported is inconsequential as it relates to motor vehicle safety and its petition is hereby denied.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 2, 1979.

MICHAEL M. FINKELSTEIN,
Acting Associate,
Administrator for Rulemaking.

[FR Doc. 79-7981 Filed 3-16-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety
Administration

[Docket No. IP79-3; Notice 1]

FORD MOTOR CO.

Petition for Determination of Inconsequential
Noncompliance

Ford Motor Company of Dearborn, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.106, Motor Vehicle Safety Standard No. 106, *Brake Hoses*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.11 of Motor Vehicle Safety Standard No. 106 requires that an end fitting of a hydraulic brake hose shall show no base metal corrosion on the end fitting surface, after 24 hours of exposure to salt spray, except where crimping or the application of labeling information has caused displacement of the protective coating. Ford Motor Company has informed NHTSA that brake hose end fittings "in some of the approximately 240,000 Fairmont and Zephyr cars built from August 3, 1977, to January 9, 1978" may possibly fail to meet the corrosion requirement.

Specifically, Ford determined that the corrosion resistant zinc plating on some of the steel end fittings shipped to Ford by the Weatherhead Company, had been plated by Superior Plating less than the Ford-specified minimum thickness of .00015 inch. This discovery was made in the aftermath of tests by the Canadian Standards Association which had resulted in the formation of red rust on the end fittings. While Ford believes the Canadian tests were more rigorous than that specified by S5.3.11, nevertheless its own testing of one hose from the same production lot as those initially tested by Canada "found evidence of corrosion on the steel end fittings." Ford's tests to Standard No. 106 on end fittings manufactured after Superior Plating had corrected its error showed no evidence of base metal corrosion.

Ford argues that if corrosion occurs, it will not result in any significant reduction of brake hose strength. It subjected the hose that had failed its corrosion test to the burst strength test specified in S5.3.2, the rubber section

of the assembly failed at 11,500 psi. There was no apparent damage to the end fittings, and the burst level was said to be comparable to that recorded in the tests of new hose assemblies. Ford conducted additional tests based upon daily exposure of end fittings to salt spray for 60 days and experienced burst strength values comparable to the 11,500 psi of the original test.

The petitioner states that there is no way to determine which end fittings would have complied or failed to comply when new, and that remedy would require replacement of brake hoses in all 240,000 vehicles. It concludes that its tests have shown

"... that brake hose assemblies as used on the 1978 Fairmont/Zephyr even after being subject to a long term severely corrosive environment, will still be capable of withstanding pressures far in excess of that required to operate the vehicle brakes. Therefore, installation of 1978 model Fairmont/Zephyr brake hose end fittings which might have, if tested, developed surface corrosion during a 24-hour salt spray test, poses no higher risk of injury than like fittings which are resistant to such corrosion."

Interested persons are invited to submit written data, views and arguments on the petition of Ford Motor Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the FEDERAL REGISTER pursuant to the authority indicated below.

Comment closing date: April 18, 1979.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 13, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator
for Rulemaking.

[FR Doc. 8135 Filed 3-16-79; 8:45 am]

[4910-59-M]

JORMA KETO

Denial of Petition To Conduct Defect
Proceeding

This notice sets forth the reasons for denial of a petition to commence a proceeding to determine whether a defect related to motor vehicle safety

exists in a vehicle. This notice is published in accordance with section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) which provides that the National Highway Traffic Safety Administration must grant or deny such petition within 120 days of receipt, and "If the Secretary denies such petition he shall publish in the FEDERAL REGISTER his reasons for such denial" (section 124 (d)).

On August 1, 1978, Mr. and Mrs. Jorma Keto of Greencastle, Pennsylvania, wrote the agency alleging that the clutch cables of the 1972 Jeep Commando constitute a safety related defect. Specifically, the Ketos wrote of "numerous failures of the clutch release cable" of the manual transmission of their vehicle. The agency reviewed its records and discovered seven additional complaints of clutch cable problems on 1972 Jeep Commandos, none of which had been received later than 1975, and none of which involved an accident. The manufacturer, American Motors Corporation, was requested to furnish all relevant information concerning the matter. No accidents involving clutch cables had been reported to it. On the basis of all the information available, NHTSA determined that there was no reasonable possibility that a notification and remedy order would be issued at the conclusion of the requested investigation, the Keto was denied.

9(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 318 (15 U.S.C. 1392, 1407); sec. 106, Pub. L. 93-492, 88 Stat. 1482 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 13, 1979.

LYNN L. BRADFORD,
Acting Associate
Administrator for Enforcement.
[FR Doc. 79-8134 Filed 3-16-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 79-85]

Cancellation of Customhouse Broker's License

MARCH 14, 1979.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of Customhouse Broker License.

SUMMARY: This document advises the public that in accordance with the request of Ernest B. Cota, his individual customhouse broker's license which was issued on November 8, 1967, for the Customs District of San Francisco, California, is cancelled with prejudice.

EFFECTIVE DATE: March 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Drew W. Hatcher, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229 (202-566-5476).

CANCELLATION WITH PREJUDICE OF INDIVIDUAL CUSTOMHOUSE BROKER LICENSE 3971

Notice is hereby given that the Commissioner of Customs, on March 14, 1979, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.51(b), Customs Regulations, upon the specific request of Ernest B. Cota, San Jose, California, cancelled with prejudice individual customhouse broker's license No. 3971 issued to him on November 8, 1967, for the Customs District of San Francisco, California. The Commissioner's decision is effective as of March 14, 1979.

ROBERT E. CHASEN
Commissioner of Customs.

[FR Doc. 79-8267 Filed 3-16-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 47]

ASSIGNMENT OF HEARINGS

MARCH 14, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 120257 (Sub-41), K. L. Breeden & Sons, Inc., now assigned for hearing on May 15, 1979, (2 days), at Birmingham, Ala., in a hearing room to be later designated.

MC 103926 (Sub-72F), W. T. Mayfield Sons Trucking Co.

MC 138882 (Sub-128F), Wiley Sanders Truck Lines, Inc., now assigned for hearing on May 17, 1979, (2 days), at Birmingham, Ala., in a hearing room to be later designated.

MC 2908 (Sub-23F), Capital Motor Lines, DBA Capitol Trailways, now assigned for hearing on May 21, 1979, (1 week), at Tuscaloosa, Ala., in a hearing room to be later designated.

MC 108461 (Sub-129F), Sundance Freight Lines, Inc., DBA Sundance Transportation, now assigned for hearing on May 7, 1979, (10 days), at Albuquerque, New

Mexico, in a hearing room to be later designated.

MC 141369 (Sub-6F), V.I.P. Limousine, Inc., now assigned for hearing May 9, 1979, New York City New York is canceled transferred to Modified Procedure.

MC 21866 (Sub-107F), West Motor Freight, Inc., now assigned for hearing March 14, 1979, at Philadelphia, Pennsylvania is canceled transferred to Modified Procedure.

MC 13668F, Garrison Motor Freight, Inc.—Purchase (Portion)—The Rock Island Motor Transit Company, now assigned for hearing March 6, 1979, at Washington, D.C. is canceled transferred to Modified Procedure.

MC 142189 (Sub-35F), C. M. Burns, DBA Western Trucking, now assigned for hearing March 8, 1979, at Chicago, Illinois is canceled transferred to Modified Procedure.

MC87909 (Sub-28), Kroblin Transportation System, Inc., now assigned for hearing March 26, 1979, at Chicago, Illinois is canceled transferred to Modified Procedure.

MC113651 (Sub-268F), Indiana Refrigerator Lines, Inc., now assigned March 20, 1979, at Louisville, Kentucky is canceled transferred to Modified Procedure.

MC 1115435 (Sub-255F), Home Transportation Company, Inc., now assigned for hearing on April 17, 1979, at San Francisco, California and will be held in Room 510, 211 Main Street and continued to May 7, 1979 in Atlanta, Georgia and will be held in Peachtree Plaza, at International Boulevard.

MC 42846 (Sub-6F), Debolt-Somerset Bus Company, now assigned March 12, 1979, (1 week), at Greensburg, PA., is canceled and transferred to modified Procedure.

MC 115022 (Sub-32F), Chamberlain Mobilehome Transport, Inc., now assigned March 27, 1979, at Washington, D.C. is canceled and transferred to modified Procedure.

FD 28838F, State of California, Department of Transportation on V. The Atchison, Topeka and Santa Fe Railway Company, now assigned for hearing on April 23, 1979, at San Francisco, California and will be held in Room 510, 211 Main Street.

MC 127267 (Sub-2F), American Pacific Express, Inc., now assigned for hearing on April 18, 1979, at San Francisco, California and will be held in Room 543, 5th Floor, Federal Building.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8240 Filed 3-16-79; 8:45 am]

[7035-01-M]

[Notice No. 167]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment re-

sulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission by April 18, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopsis form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77958, filed December 13, 1978. Transferee: City Transfer Co., Ltd., 98-054-A Kuleana Road, Pearl City, HI 96782. Transferor: City Transfer Co., Ltd., 2111 Wilcox Lane, Honolulu, HI 96819. Representative: Alan F. Wohlsetter, Attorney at Law, 1700 K Street NW., suite 301, Washington, DC 20006. Authority sought to purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC-127565 (Sub-No. 1), issued June 19, 1974, as follows: Household goods, as defined by the Commission, between points in Hawaii.

Transferee presently holds no authority from the Commission but it presently controls InterIntra Forwarding, Inc., an interstate freight forwarder as set forth in FF-463, issued April 26, 1976.

Application has not been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8239 Filed 3-16-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28977 F]

WESTERN PACIFIC RAILROAD CO. AND SOUTHERN PACIFIC TRANSPORTATION CO.

Pooling of Railroad Freight Services Between Oakland and Alameda, CA

The Western Pacific Railroad Company (WP), 526 Mission Street, San Francisco, CA 94105, and Southern Pa-

cific Transportation Company (SP), One Market Street, San Francisco, CA 94105, represented by Edward K. Wheeler, 1729 H Street NW., Washington, DC 20006, Walter G. Treanor and Eugene J. Toler, 526 Mission Street, San Francisco, CA 94105, and Louis P. Warchot, One Market Street, San Francisco, CA 94105, hereby give notice that on the 5th day of March, 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application under Section 11342 of the Interstate Commerce Act (formerly Section 5(1)) for a decision approving and authorizing pooling of railroad freight services between Oakland and Alameda, CA, a distance of 6.955 miles, to provide better service to the public and to effect significant economies in operations by both carrier applicants.

Presently both carriers serve the Alameda area with separate lines of railroad. SP's line of railroad enters Alameda over a land route while the WP operations require a train ferry operation across San Francisco Bay between Oakland and Alameda, CA. The WP operation is unnecessarily duplicative of the SP operation and is unnecessarily expensive and time-consuming involving a transfer on and off the train ferry. It is applicants' intention through the pooling agreement to provide for an alternative improved and more effective means of effecting a high quality rail service to the San Francisco and Alameda shipping public.

Service will be provided pursuant to a pooling agreement signed by the two companies, dated February 1, 1979, under which SP would transport WP's cars over SP's lines between a connection with WP in the vicinity of Adeline Street in the City of Oakland and an existing SP-Alameda Belt Line interchange in the Belt Line's yard in the City and County of Alameda, CA.

In the opinion of the applicants, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 ICC 451 (1976), any protests may include a statement indicating the presence or absence or any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific

data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423, and the aforementioned counsel for applicants, within 30 days after date of first publication in the FEDERAL REGISTER. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8237 Filed 3-16-79; 8:45 am]

[7035-01-M]

(Finance Docket No. 28975 F)

WESTERN PACIFIC RAILROAD CO. AND SOUTHERN PACIFIC TRANSPORTATION CO.

Pooling of Railroad Freight Services Between Fremont and San Francisco, CA

The Western Pacific Railroad Company (WP), 526 Mission Street, San Francisco, CA 94105, and Southern Pacific Transportation Company (SP), One Market Street, San Francisco, CA 94105, represented by Edward K. Wheeler, 1729 H Street, N.W., Washington, DC 20006, Walter G. Treanor and Eugene J. Toler, 526 Mission Street, San Francisco, CA 94105, and Louis P. Warchot, One Market Street, San Francisco, CA 94105, hereby give notice that on the 5th day of March 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application under Section 11342 of the Interstate Commerce Act (formerly Section 5(1)) for a decision approving and authorizing pooling of railroad freight services between Fremont and San Francisco, CA, a distance of approximately 38.6 miles, to provide better service to the public and to effect significant economies in operations by both carrier applicants.

Presently both carriers serve the San Francisco area with separate lines of railroad. SP's line of railroad enters San Francisco over land route while the WP operations require a train ferry operation across San Francisco Bay between Oakland and San Francisco, CA. The WP operation is unne-

cessarily duplicative of the SP operation and is unnecessarily expensive and time-consuming involving a transfer on and off the train ferry. It is applicant intention through the pooling agreement to provide for an alternative improved and more effective means of effecting a high quality rail service to the San Francisco shipping public.

Service will be provided pursuant to a pooling agreement signed by the two companies, dated February 1, 1979, under which SP would transport WP's cars over SP's lines between a connection with WP at or near SP's station of Shinn (WP's station at Fremont) and San Francisco, to and from SP's connection with San Francisco Belt Railway at Second and King Streets, San Francisco, and between Oakland and San Francisco.

In the opinion of the applicants, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicants, within 30 days after the date of first publication in the FEDERAL REGISTER. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8238 Filed 3-16-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board.....	1, 2, 3
Commodity Futures Trading Commission.....	4
Federal Communications Commission.....	5
Federal Deposit Insurance Corporation.....	6, 7
Federal Election Commission.....	8, 9
Federal Energy Regulatory Commission.....	10, 11
Federal Home Loan Bank Board.....	12
Federal Reserve System (Board of Governors).....	13
Legal Services Corporation.....	14
National Transportation Safety Board.....	15
Oveseas Private Investment Corporation.....	16
Tennessee Valley Authority.....	17

[6320-01-M]

1

[M-203 Amdt. 1; Mar. 13, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the March 15, 1979 meeting agenda.

TIME AND DATE: 10:00 a.m., March 15, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 26a. Dockets 34345 and 34403; TXI's exemption to reduce service at Roswell from two daily round trips to one. (Memo #8530-B, BPDA, OCCR)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

We have required TXI to continue to serve, with subsidy eligibility, a series of New Mexico points where it has given notice of intent to suspend (Carlsbad and Hobbs) or reduce operations below the essential level (Roswell). New carriers have begun operating at these points, and we are now prepared to recommend Board action permitting TXI or a replacement carrier to reduce their services. We want to move as quickly as possible in order to curtail existing, uneconomic duplication of services, without sacrificing a

satisfactory transition. Accordingly, the following Members have voted that agency business requires the addition of Item 26a to the March 15, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-530-79 Filed 3-15-79; 10:05 am]

[6320-01-M]

2

[M-205 Mar. 14, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 32737 (*Amos E. Heacock, d/b/a Air Transport Associates v. Director of Central Intelligence, et al.*). Petition for review of the Director, BCP's dismissal of third-party complaint. (OGC)

3. Dockets 32230, 32306, and 33545; *Mildred Dupack v. Nationwide Leisure Corporation, et al.*; *Samuel Reiken v. Nationwide Leisure Corporation, et al.*; *Gloria Goodman v. Nationwide Leisure Corporation, et al.*; petition for review of Bureau of Consumer Protection dismissals of third party complaints alleging "hotel switching" by tour operator in violation of the Board's regulations. (OGC)

4. Waiver of Part 250 Notice Provisions to allow substitute notice of noncompliance with disclosure requirements. (Memo #8604, BPDA)

5. Docket 34276, Application of Ozark Air Lines for exemption authority in the "unused authority market" of St. Louis-Orlando. (BPDA)

6. Docket 34061, United's application for Denver-Hawaii nonstop authority. (Memo #8593, BPDA)

7. Dockets 33874 and 34062, American's application for an exemption to provide nonstop Chicago/San Diego-Honolulu service; American's application for a certificate amendment for Route 4 to enable it to provide nonstop Chicago/San Diego-Honolulu service. (Memo #8594, BPDA, OGC, BLJ)

8. Dockets 32260, 32291, 32384, 33309, 33403, 33541, 33600, 33633, 34532, 33404, 33518, and 33704; *Los Angeles/San Francisco/San Diego/St. Louis/Kansas City-Hawaii Show-Cause Proceeding—Instituting Order.* (Memo #8161-A, BPDA)

9. Dockets 32954 and 34518, Applications of Texas International and Ozark for

Dallas/Ft. Worth-Oklahoma City certificate authority. (Memo #6130-G, BPDA)

10. Docket 34215, Ozark's application for Removal of restrictions in Kansas City-Chicago/Denver markets and Frontier's request to remove restriction in Kansas City-Chicago market. (Memo #8602, BPDA, OGC, BLJ)

11. Docket 33288, Petition by Governor, State of Illinois; City of Rockford, Illinois; Greater Rockford Airport Authority; et al. for Show-Cause Order to Hyphenate Chicago, Illinois and Rockford, Illinois on Certificates of Airlines Serving Chicago but not Authorized to Serve Rockford. (Memo #8418-A, BPDA)

12. Docket 31727, Finalization of Show Cause Order 79-1-31, tentatively amending Reeve's certificate for Route 127 to add a new segment between the terminal points Cold Bay, Alaska and Seattle, Washington. (BPDA)

13. Docket 32755, Application of Pacific Southwest Airlines for a certificate to perform charter air transportation west of the Mississippi River. (Memo #8384-C, BPDA, OGC)

14. Docket 34706, United's Notice of Intent to Suspend Nonstop and Single-plane Service Under Section 401(j)(2) of the Act. (Memo #8591, BPDA, OCCR)

15. Dockets 32901 and 34813, TXI's notice of intent to suspend at Carlsbad and Hobbs, New Mexico; Crown's application to provide essential air service at Carlsbad and Hobbs. (Memo #8351-F, BPDA, OCCR)

16. Dockets 33346, 33347, 34855, and 34584; Northwest suspension at Jamestown, N.D., and replacement proposals; Air Wisconsin 401 certificate for Jamestown route. (BPDA)

17. Dockets 34333, 34350, 34349, and 34410; Allegheny replacement service agreements and notices of suspension of service. (BPDA)

18. Dockets 34423 and 34591, Piedmont's application for permission to serve Hot Springs, Virginia, through Greenbrier Valley, West Virginia; Piedmont's notice to suspend service at Hot Springs. (Memo #8592, BPDA, OCCR)

19. Dockets 34509 and 34784, Piedmont's notice of intent to suspend service at Greenville-Spartanburg, South Carolina, under section 401(j)(1) and in thirteen Greenville-Spartanburg markets under section 401(j)(2). (BPDA, OCCR)

20. Docket 34608, Southern's 60-day notice to terminate nonstop and single-plane service between Greenville, Miss. and Jackson, Miss. (Memo #8600, BPDA, OCCR)

21. Dockets 34774 and 34789, Notice of Metro Airlines of intent to terminate service at Paris, Texas. (BPDA, OCCR)

22. Docket 30356, Transcontinental Low-Fare Route Proceeding—Draft Order on Reconsideration. (BIA)

23. Dockets 32820 and 26772, Hawaii Common Fares Investigation—Instituting Order. (Memo #8603, BPDA, OGC, BLJ)

SUNSHINE ACT MEETINGS

24. Docket 34603, Alaska Airline's application to extend its embargo on tropical fish. (Memo #8599, BPDA)

25. Petition of Allegheny Airlines, Inc. for review of staff action approving American Airlines, Inc.'s special tariff permission application to allow free transportation for up to two children when accompanied by a fare paying adult. (Memo #8598, BPDA)

26. Docket 29387, Part 288—Draft final rule establishing a fuel surcharge applicable to Categories A and B minimum rates to reflect reported fuel price changes for January 1979. (Memo #8364-A, BPDA)

27. Docket 32660, IATA agreement expanding free and reduced rate travel opportunities for cargo agents and extending similar privileges to agent spouses. (Memo #8595, BPDA, BIA)

STATUS: Open.

PERSON TO CONTRACT:

Phyllis T. Kaylor, the Secretary,
202-673-5068.

[S-536-79 Filed 3-15-79; 11:32 am]

[6320-01-M]

3

[M-202 Amdt. 2; Mar. 12, 1979]

CIVIL AERONAUTICS BOARD.

Notice of closure and addition to the March 12, 1979 meeting.

TIME AND DATE: 9:30 a.m., March 12, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Bilateral Aviation Matters with Peru.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary,
202-673-5068.

SUPPLEMENTARY INFORMATION:

By reason of activities that occurred late Friday in the U.S.-Peru negotiations it is necessary that the Board be briefed on the current status of those negotiations. Public disclosures, particularly to foreign governments, of opinion, the ability of the United States Delegation to achieve an agreement which would be in the best interests of the United States. Accordingly, the staff believes that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(9)(B) and 14 CFR section 310b.5(9)(B) and that such meeting should therefore be closed.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

PERSONS EXPECTED TO ATTEND:

BOARD MEMBERS

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

ASSISTANTS TO BOARD MEMBERS

Mr. David M. Kirstein

ACTING MANAGING DIRECTOR

Mr. Sanford Rederer

EXECUTIVE ASSISTANT TO MANAGING DIRECTOR

Mr. John Hancock

BUREAU OF INTERNATIONAL AFFAIRS

Mr. Donald A. Farmer, Jr.
Mr. Francis S. Murphy
Ms. Carolyn Coldren
Mr. David Levitt

OFFICE OF THE GENERAL COUNSEL

Ms. Carol Light
Mr. Peter B. Schwarzkopf

BUREAU OF PRICING AND DOMESTIC AVIATION

Mr. Michael Levine
Ms. Barbara Clark

BUREAU OF CONSUMER PROTECTION

Mr. Reuben Robertson
Ms. Patricia Kennedy

OFFICE OF THE SECRETARY

Mrs. Phyllis T. Kaylor
Ms. Linda Senese

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

PHILLIP J. BAKES, Jr.,
General Counsel.

[S-529-79 Filed 3-15-79; 10:05 am]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 3 p.m., March 16, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Disposition of formal agency adjudications.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-532-79 Filed 3-15-79; 9:57 am]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, March 15, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

Private Radio Services—1—Amendment of Parts 83 and 91 to aid pollution prevention, to broaden permissible communications aboard vessels involved in large oil transfer operations, (SS Docket No. 78-324).

Additional information concerning this item may be obtained from the FCC Public Affairs Office, telephone number 202-632-7260.

Issued: March 14, 1979.

[S-539-79 Filed 3-15-79; 3:23 pm]

[6714-01-M]

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 4 p.m. on Tuesday, March 20, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings. Request by the Board of Governors of the Federal Reserve System for a report on the competitive factors involved in the proposed merger of United California Bank, Los Angeles, California, and Sierra National Bank, Petaluma, California.

Requests by the Comptroller of the Currency for reports on the competitive factors involved in proposed mergers:

Warrick National Bank of Boonville, Boonville, Indiana, and The Colonial National Bank, Ohio Township (P.O. Newburgh), Indiana.

First National Bank of Shreveport, Shreveport, Louisiana, and Caddo Trust and Savings Bank, Belcher, Louisiana.

The Third National Bank and Trust Company of Dayton, Ohio, Dayton, Ohio, and The Citizens First National Bank of Greene County, Xenia, Ohio.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Schall, Boudreau & Gore, San Diego, California, in connection with the receivership of United States National Bank, San Diego, California (three memorandums).

Bronson, Bronson & McKinnon, San Francisco, California, in connection with

the receivership of United States National Bank, San Diego, California.

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the liquidation of First State Bank of Northern California, San Leandro, California.

Pillsbury, Madison & Sutro, San Francisco, California, in connection with the liquidation of First State Bank of Northern California, San Leandro, California.

Patterson & Patterson, Whitfield, Manikoff, Yernan and White, Bloomfield Hills, Michigan, in connection with the receivership of Birmingham Bloomfield Bank, Birmingham, Michigan.

Parsons, Canzona, Blair & Warren, Red Bank, New Jersey, in connection with the liquidation of The Bank of Bloomfield, Bloomfield, New Jersey.

Kaye, Scholer, Fierman, Hays & Handler, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Schneider, Smeltz, Huston & Bissell, Cleveland, Ohio, in connection with the liquidation of Northern Ohio Bank, Cleveland, Ohio.

Mansell, Post, Brandon & Dorsey, Atlanta, Georgia, in connection with the liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Meredith, Donnell & Edmonds, Corpus Christi, Texas, in connection with the liquidation of Northeast Bank of Houston, Houston, Texas.

Ross & Stevens, S.C., Madison, Wisconsin, in connection with the liquidation of Algoma Bank, Algoma, Wisconsin.

Gibbs, Roper, Loots & Williams, Milwaukee, Wisconsin, in connection with the liquidation of American City Bank & Trust Company, National Association, Milwaukee, Wisconsin.

Memorandum proposing the payment of a third dividend of 10 percent in connection with the receivership of Coronado National Bank, Denver, Colorado.

Memorandum proposing the payment of a second dividend of 12 percent in connection with the receivership of The Peoples Bank of the Virgin Islands, Charlotte Amalie, Virgin Islands.

Memorandum and resolution proposing the publication of a semiannual agenda of proposed regulations and existing regulations under review.

Recommendations with respect to the amendment of Corporation rules and regulations:

Memorandum and resolution proposing the final adoption of amendments to Parts 303, 304 and 328 of the Corporation's rules and regulations relating to remote service facilities.

Memorandum and resolution proposing the rescission of Part 334 of the Corporation's rules and regulations, entitled "Bank Service Arrangements," and the amendment of Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports," to implement the new notice requirement for bank service arrangements prescribed by section 308 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

Memorandum and resolution proposing the repeal of section 337.3 of the Corporation's rules and regulations, relating to insider transactions.

Memorandum and resolution proposing the final adoption of an amendment to Part 345 of the Corporation's rules and regulations, entitled "Community Reinvestment," relating to banks whose business predominantly consists of serving the needs of military personnel who are not located within a defined geographic area.

Memorandum proposing field examiner specialization in consumer protection and civil rights examinations.

Memorandum proposing that the Corporation process national bank call reports and trust asset surveys.

Memorandum proposing the negotiation of a contract for the performance of a study as to the feasibility of the Corporation's providing computer support to the Office of the Comptroller of the Currency.

Memorandum proposing the approval of a contract for the replacement of the Corporation's computer disk storage equipment.

Resolution regarding the retirement of Regional Director Frank T. Locki.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director of the Division of Liquidation detailing all disbursements in excess of \$10,000 and all sales of real estate properties, during the period December 16, 1978-February 16, 1979, in connection with the liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Report of the Controller summarizing liquidation and insurance expenses, estimated losses, and other fiscal data with respect to active liquidations as of December 31, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Boyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-525-79 Filed 3-15-79; 10:05 am]

[6714-01-M]

7

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 4:30 p.m. on Tuesday, March 20, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550, 17th Street N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Citizens Bank of Northport, a proposed new bank to be located at 2100 McFarland Boulevard, Northport, Alabama, for Federal deposit insurance.

Farmers and Merchants Bank, a proposed new bank to be located at 219 North

Fourth Street, Buckeye, Arizona, for Federal deposit insurance.

Mission Bank, a proposed new bank to be located at 6814 Magnolia Avenue, Riverside, California, for Federal deposit insurance.

Sherman Community Bank, a proposed new bank to be located on Andrew Road approximately 600 feet west of the intersection of Andrew Road and Business I-55, Sherman, Illinois, for Federal deposit insurance.

Bank of Iberia, a proposed new bank to be located at 1106 Center Street, New Iberia, Louisiana, for Federal deposit insurance.

American Bank of Arlington, a proposed new bank to be located at 1818 North Cooper Street, Arlington, Texas, for Federal deposit insurance.

Klein State Bank, a proposed new bank to be located at 17046 Stuebner-Airline Road, Klein (Unincorporated), Texas, for Federal deposit insurance.

The Wheatland Bank, a proposed new bank to be located at 600 Morgan Street, Davenport, Washington, for Federal deposit insurance.

Citizens Industrial Financing Corporation, an operating industrial loan company converting to an industrial bank, located at 265 South High Street, Morgantown, West Virginia, for Federal deposit insurance.

Application for consent to establish a branch:

Umatilla State Bank, Umatilla, Florida, for consent to establish a branch on Butler Street (State Road 40) near its intersection with Alco Street, Unincorporated Lake County (P.O. Astor), Florida.

Application for consent to merge and to establish branches:

Albany Savings Bank, Albany, New York, an insured mutual savings bank, for consent to merge under its charter and title with Heritage Savings Bank, Kingston, New York, also an insured mutual savings bank, and for consent to establish the seven offices of Heritage Savings Bank as branches of the resultant bank.

Recommendations regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,821-L—The Drovers' National Bank of Chicago, Chicago, Illinois.

Case No. 43,823-L—Franklin National Bank, New York, New York.

Case No. 43,826-L—Franklin National Bank, New York, New York.

Case No. 43,828-L—Algoma Bank, Algoma, Wisconsin.

Case No. 43,834-L—Banco Credito y Ahorre Ponceno, Ponce, Puerto Rico.

Case No. 43,835-NR—United States National Bank, San Diego, California.

Case No. 43,848-L—Northern Ohio Bank, Cleveland, Ohio.

Memorandum re: United States National Bank, San Diego, California.

Memorandum re: American Bank & Trust Company, New York, New York.

Memorandum re: Franklin National Bank, New York, New York.

Memorandum re: Franklin National Bank, New York, New York.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal pro-

ceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-526-79 Filed 3-15-79; 10:05 am]

[6715-01-M]

8

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, March 14, 1979, at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting was open to the public.

Due to extraordinary circumstances, the Commission held a special open meeting to discuss testimony to be given before the House Administration Committee, U.S. House of Representatives on March 15, 1979, on H.R. 1, a bill to provide for financing of general election campaigns for the House of Representatives.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-531-79 Filed 3-15-79; 10:05 am]

[6715-01-M]

9

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, March 22, 1979 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Setting of dates for future meetings, correction and approval of minutes, advisory opinion, 1979-5.

Appropriations and budget, pending legislation, 1980 elections and related matters.

Classification actions, routine administrative matters.

Portions closed to the public (following Open Session):

Audits and audit policy, compliance, personnel, litigation, labor/management relations, computer contract.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.
[S-541-79 Filed 3-15-79; 3:42 pm]

[6740-02-M]

10

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: March 15, 1979, 2 p.m.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending civil litigation and On-the-record proceeding.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone 202-275-4166.

[S-534-79 Filed 3-15-79; 11:14 am]

[6740-02-M]

11

MARCH 14, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: March 21, 1979, 10 a.m.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone 202-275-4166.

This is a list of the matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Office of Public Information.

POWER AGENDA—250TH MEETING, MARCH 21, 1979, REGULAR MEETING (10 A.M.)

CAP-1. Project No. 2666, Bangor Hydro-Electric Company

CAP-2. Project No. 459, Union Electric Company

CAP-3. Docket No. ER78-626, Kansas Power & Light Company

CAP-4. Docket No. ER79-65, Upper Peninsula Power Company, Upper Peninsula Generating Company, and Cliffs Electric Service Company

CAP-5. Docket No. ER78-425, Minnesota Power & Light Company

CAP-6. Docket No. ER78-379, et al., Indiana & Michigan Electric Company

CAP-7. Docket Nos. EL78-15 and ER78-339, Public Service Company of New Hampshire

CAP-8. Docket No. ES79-27, Pacific Power & Light Company

GAS AGENDA—250TH MEETING—MARCH 21, 1979, REGULAR MEETING

CAG-1. Docket Nos. RP72-134, RP75-46 and RP77-17, (PGA No. 79-4 and DCA No. 79-2), Eastern Shore Natural Gas Company

CAG-2. Docket Nos. G-9279, et al., Northern Natural Gas Company

CAG-3. Docket No. CP79-178, Exxon Company, U.S.A. Docket No. CI78-1145, HNG Oil Company. Docket No. CI79-146, Ladd Petroleum Company. Docket No. CI79-94, Mesa Petroleum Company. Docket No. CI79-65, Mobil Oil Corporation. Docket No. CI79-179, Sabine Production Company. Docket No. CI78-1260, Atlantic Richfield Company. Docket No. CI79-224, Transocean Oil, Inc. Docket No. CI78-1094, Anadarko Production Company.

CAG-4. Docket Nos. CI77-419, CI77-711, CI79-29, CI78-962, Transco Exploration Company.

CAG-5. Docket Nos. CI79-103, CI79-199, CI79-178, CI64-349, Exxon Corporation

CAG-6. Docket No. TC79-8, Examinations in Response to Court Ordered Remand Concerning Supply Shortages on the Transcontinental Gas Pipe Line System

CAG-7. Docket No. CP78-16, Tenneco LNG Inc.

CAG-8. Docket No. CP79-111, Northern Natural Gas Company

CAG-9. Docket No. CP79-121, Columbia Gulf Transmission Company and Natural Gas Pipeline Company of America

CAG-10. Docket No. CP79-74, Arkansas Louisiana Gas Company

CAG-11. Docket No. CP79-67, Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

CAG-12. Docket No. CP79-82, Natural Gas Pipeline Company of America. Docket No. CP79-98, United Gas Pipe Line Company

CAG-13. Docket No. CP78-372, Natural Gas Pipeline Company of America. Docket No. CP78-374, Transcontinental Gas Pipe Line Corporation

CAG-14. Docket No. CP79-138, Northern Natural Gas Company and Panhandle Eastern Pipe Line Company

CAG-15. Docket No. CP75-71, Natural Gas Pipeline Company of America and Transwestern Pipeline Company

CAG-16. Docket No. G-6508, Texas Eastern Transmission Corporation and Trunkline Gas Company

CAG-17. Docket No. CP73-321, Equitable Gas Company

CAG-18. Docket No. CP79 99, Cities Service Gas Company

CAG-19. Docket No. CP79-25, Transcontinental Gas Pipe Line Corporation

MISCELLANEOUS AGENDA—250TH MEETING, MARCH 21, 1979, Regular Meeting

CAM-1. Section 404 referral by the secretary of energy to the FERC of proposed amendments to the domestic crude oil allocation (entitlements) program

CAM-2. Section 404 referral of proposed regulations to streamline administrative procedures applicable to the issuance and review of subpoenas and special report orders and to amend the rules regarding investigation procedures

CAM-3. Edison Sault Electric Company

CAM-4. Arkansas Oklahoma Gas Corporation

CAM-5. Texas Gas Transmission Corporation

CAM-6. Kentucky Utilities Company

POWER AGENDA—250TH MEETING, MARCH 21, 1979, Regular Meeting

I. LICENSED PROJECT MATTERS

P-1. Project No. 2821, City of Portland, Oregon

P-2. Project No. 2780 and 2783, Solano Irrigation District and California Department of Water Resources

II. ELECTRIC RATE MATTERS

ER-1. Docket No. ER79-166 Kansas City Power & Light Company

ER-2. Docket No. ER79-21, Missouri Utilities Company

ER-3. Docket No. ER-76-827, Minnesota Power & Light Company

ER-4. Docket No. E-8855, Boston Edison Company

ER-5. Docket No. ER77-533 (Phase I), Louisiana Power & Light Company

GAS AGENDA—250TH MEETING, MARCH 21, 1979, Regular Meeting

I. PIPELINE RATE MATTERS

RP-1. Docket No. RP79-18, Southern natural Gas Company

RP-2. Docket No. RP77-98 and RP78-78, Natural Gas Pipeline Company of America

RP-3. Docket No. RP72-122 (PGA78-3), RP78-51 and RP79-1, Colorado Interstate Gas Company

II. PRODUCER MATTERS

CI-1. Docket No. RI73-60 (Phase IV), Mitchell Energy Corporation

CI-2. Docket No. CI75-45, Tenneco Oil Company; Docket No. CI75-59, Placid Oil Company; Docket No. -66, Hunt Petroleum Corporation. Docket No. CI75-67, Hunt Industries. Docket No. CI75-68, Hunt Oil Company. Docket No. CI75-69, Kewanee Oil Company. Docket No. CI75-105, Tenneco Oil Company. Docket No. CI75-684 and CI75-107, Shell Oil Company. Docket No. CI75-122, Ashland Oil Inc. Docket No. CI75-138, Transocean Oil Inc. Docket No. CP73-339, Tennessee Gas Pipeline Company, a division of Tenneco, Inc. Docket No. CP75-330 and CP-75-19, Trunkline Gas Company. Docket No. CP75-23, CP-75-119 and CP75-120, Tennessee Gas Pipeline Company. Docket No. CP75-149, Trunkline Gas Company. Docket No. CP75-316 and CP75-151, Southern Natural Gas Company. Docket No. CP75-153, Southern Natural Gas Company. United Gas Pipe Line Company and Florida Gas Transmis-

sion Company. Docket No. CP75-163, Southern Natural Gas Company. Docket No. CP75-258, Tennessee Gas Pipeline Company, a division of Tenneco, Inc., and Tenneco Chemicals, Inc. Docket No. CI75-733, Highland Resources.

III. PIPELINE CERTIFICATE MATTERS

CP-1 Docket No. CP79-188, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CP-2 Docket No. RF72-99, Transcontinental Gas Pipe Line Corporation

MISCELLANEOUS AGENDA—250TH MEETING, MARCH 21, 1979, Regular Meeting

M-1 Docket No. RM79-4, Amendments to Commission Regulations relating to independent producer filing requirements.

KENNETH F. PLUMB,
Secretary.

[S-535-79 Filed 3-15-79; 11:14 am]

[6720-01-M]

12

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., March 21, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Limited Facility Application—First Federal Savings and Loan Association of Ridgecrest, Ridgecrest, California

Consideration of Modification of Bank Board Resolution—Homestead Savings and Loan Association, San Francisco, California

Applications for Bank Membership and Insurance of Accounts—Commonwealth Savings and Loan Association, Torrance, California

Branch Office Application—Floyd Federal Savings and Loan Association of Prestonsburg, Prestonsburg, Kentucky

Consideration of Advisory Council Travel Voucher Resolution

Consideration of Applications for Bank Membership and Insurance of Accounts—San Clemente Savings and Loan Association, San Clemente, California

Application for Permission to Organize a Federal Association—Martin J. Rovira-Garcia, et al., Guaynabo, Puerto Rico

Concurrent Consideration of 1) Service Corporation—Fidelity Federal Savings and Loan Association, Greenville, South Carolina; and, 2) Service Corporation—First Federal Savings and Loan Association, Greenville, South Carolina

Service Corporation Activity Application—First Federal Savings and Loan Association of Chicago, Chicago, Illinois

Application for Bank Membership—United Mutual Savings Bank, Tacoma, Washington

Branch Office Application—First Federal Savings and Loan Association of Jacksonville, Jacksonville, Florida

Branch Office Application—Community Federal Savings and Loan Association, St. Louis, Missouri

Branch Office Application—Citizens Federal Savings and Loan Association, Miami, Florida

Branch Office Application—Bridgeport Federal Savings and Loan Association, Bridgeport, Pennsylvania

Application to Increase Accounts of an Insurable Type by Purchase of Branch Office by Home Savings and Loan Association, Los Angeles, California from Allstate Savings and Loan Association, Los Angeles, California

Branch Office Application—York Federal Savings and Loan Association, York, Pennsylvania

Consideration of Association Request for Commitment to Insure Accounts—Life Savings and Loan Association, Clearwater, Florida

Consideration of Revision of Charges for Printed Copies and Magnetic Tapes of Insured Institution Financial Data

Consideration of Conversion Regulations and Related forms

[S-527-79 Filed 3-15-79; 10:05 am]

[6210-01-M]

13

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR, 14703, March 13, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, March 16, 1979.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item was added to Summary Agenda:

Consideration of a procedural question related to the regulation adopted by the Board on March 7 to implement sections of the Electronic Fund Transfer Act limiting liability for the unauthorized use of an EPT card and restricting the unsolicited distribution of such cards. (Docket No. R-0193).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: March 14, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-533-79 Filed 3-15-79; 10:23 am]

[6820-35-M]

14

LEGAL SERVICES CORPORATION—(BOARD OF DIRECTORS MEETING).

TIME AND DATE: 9 a.m., Thursday and Friday, March 22-23, 1979.

PLACE: Copley Plaza, Copley Square, Boston, Massachusetts.

STATUS: Open Meeting (Meeting will be closed during lunch, March 22, 1979, 12:00-1:00 p.m.)*

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of December 1, 1978 Meeting.
3. Reports from Committees.
 - a. Committee on Provision of Legal Services—
 - Reginald Heber Smith Community Fellowship Program
 - Client Training
 - Section 1007(h) Study Report
- b. Committee on Regulations—
- Completion of Revised Regulations
- c. Committee on Appropriations and Audit—
 - Selection of Corporation Auditor
 - Status of the Fiscal Year 1979 Budget and Funds Balances
4. President's Reports.
5. Resolution on Authorizing Legislation.
6. Procedures for Presidential Search.
7. Future Board Meeting Sites.
8. Other Business.

CONTACT PERSON FOR MORE INFORMATION:

Dellanor Young, Office of the President, telephone (202) 376-5100.

Issued: March 14, 1979.

THOMAS EHRLICH,
President.

[S-537-79 Filed 3-15-79; 12:23 pm]

[4910-58-M]

15

NATIONAL TRANSPORTATION SAFETY BOARD.

*The meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting will recess for lunch from 12:00 to 1:00 p.m. There will be a closed meeting at lunch on March 22, as authorized by 5 U.S.C. 552b(c)(2), that will relate solely to the discussion of the appointment of an Acting President and individuals who may be considered for appointment as President.

"FEDERAL REGISTER" CITATION AND DATE OF PREVIOUS ANNOUNCEMENT: 44FR 15864, March 15, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, March 22, 1979, 9 a.m., [NM-79-11].

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Highway Accident Report—Gateway Transportation Co., Inc., tractor semitrailer penetration of median barrier and collision with automobile, I-70, St. Louis, Mo., September 25, 1977.
2. Marine Accident Report—Luling-Destrehan ferry M/V GEORGE PRINCE collision with the tanker SS FROSTA on the Mississippi River, October 20, 1976.
3. Special Study—Safety of Multipurpose Vans.
4. Briefing by staff on the status of Federal Aviation Administration human factors programs and proposed new Safety Board human factors investigative initiatives.
5. Recommendation to Federal Aviation Administration re medical examinations of pilots as a condition of pilot certification.
6. Discussion of blood alcohol concentration as a causal factor in accidents.
7. Railroad Recommendation Closeout of R-74-9.
8. Aviation Recommendation Closeout of A-78-41.
9. Discussion of criteria for highway investigations.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-540-79 Filed 3-15-79; 3:37 pm]

[3210-01-M]

16

OVERSEAS PRIVATE INVESTMENT CORPORATION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-449-79 Filed 3-6-79; 10:43 a.m.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., Tuesday March 13, 1979.

CHANGES IN THE MEETING: In connection with a letter dated March 8, 1979 to Chairman Gilligan from the House of Representatives, Committee on Foreign Affairs instructing OPIC to consider cooperation with the Inter-American Development Bank on the subject of a possible multilateral insurance program for Latin America, discussions on the subject took place in the Open Session of the OPIC Board of Directors meeting on March 13, 1979.

CONTACT PERSON FOR MORE INFORMATION:

Elizabeth A. Burton, Corporate Secretary, (202) 632-1839.

MARCH 13, 1979.

ELIZABETH A. BURTON.

[S-528-79 Filed 3-15-79; 10:05 am]

[8120-01-M]

17

[Meeting No. 1213]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 2 p.m., Thursday, March 22, 1979.

PLACE: Raymond McCurdy Farm, Route 2, Kelly Mill Road, Dyer, Tennessee.

STATUS: Open.

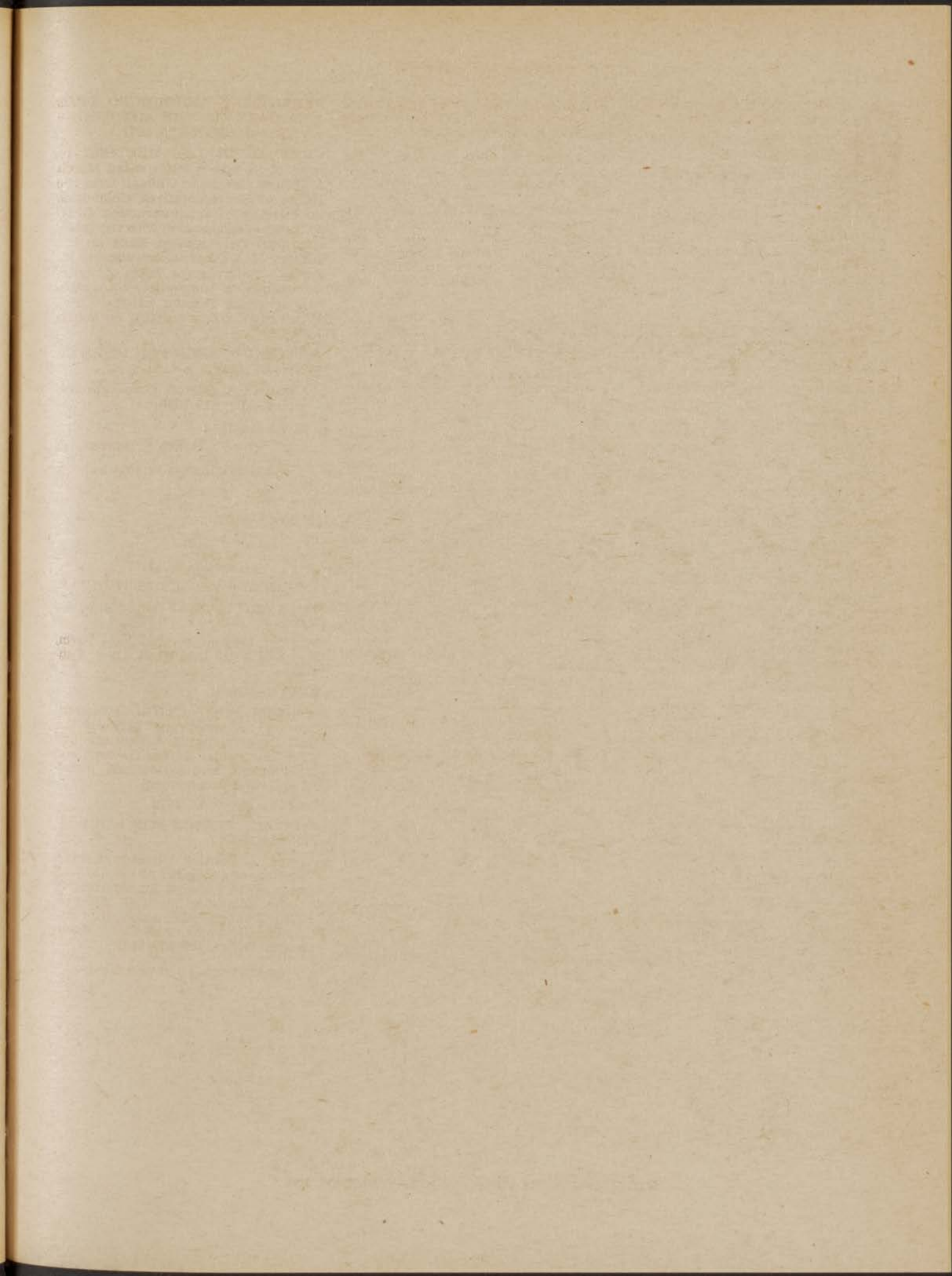
MATTER FOR ACTION: Memorandum of understanding between the U.S. Department of Agriculture and TVA concerning fertilizer research and development, and agriculture, forestry, and rural development.

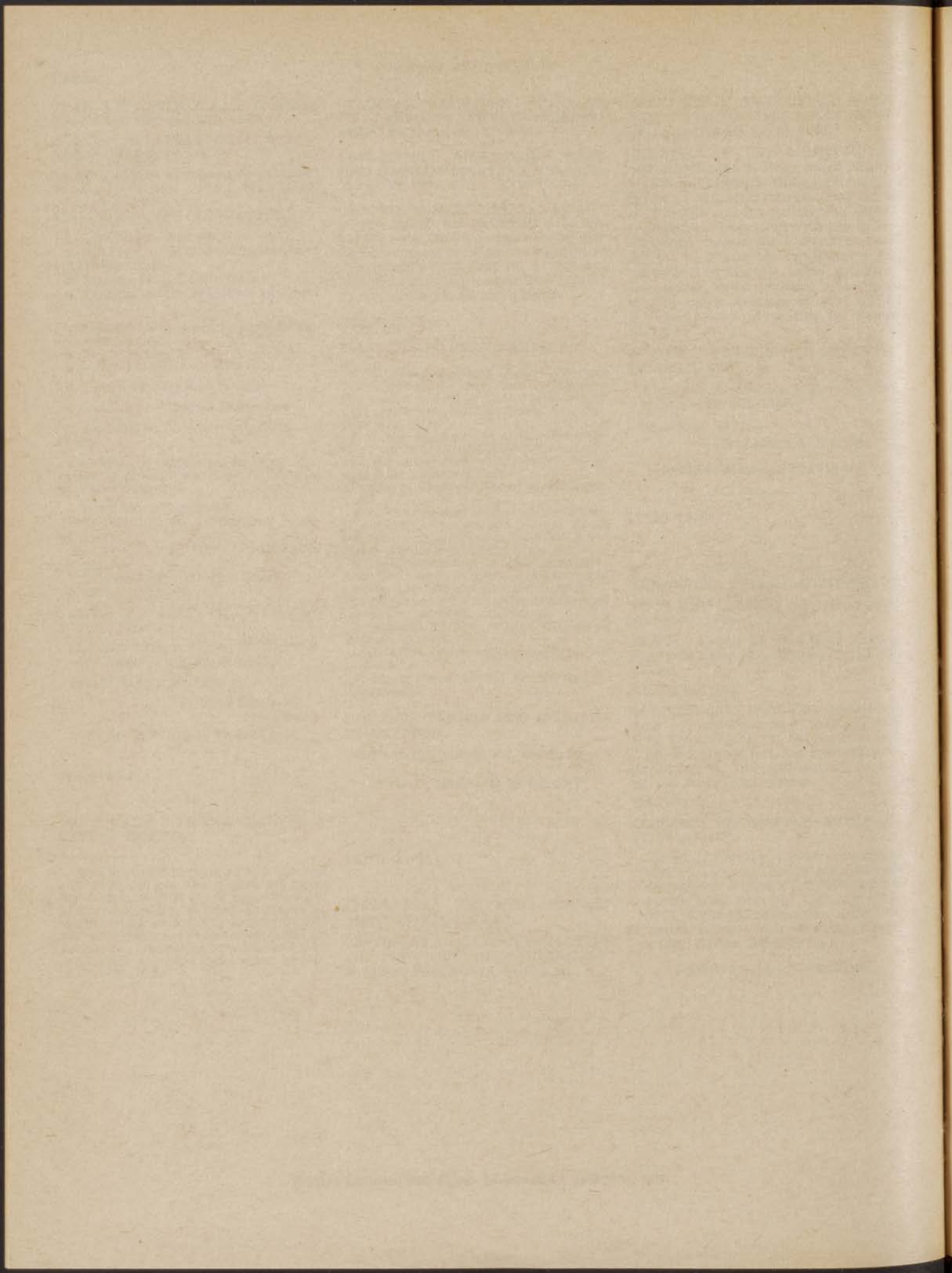
DATED: March 15, 1979.

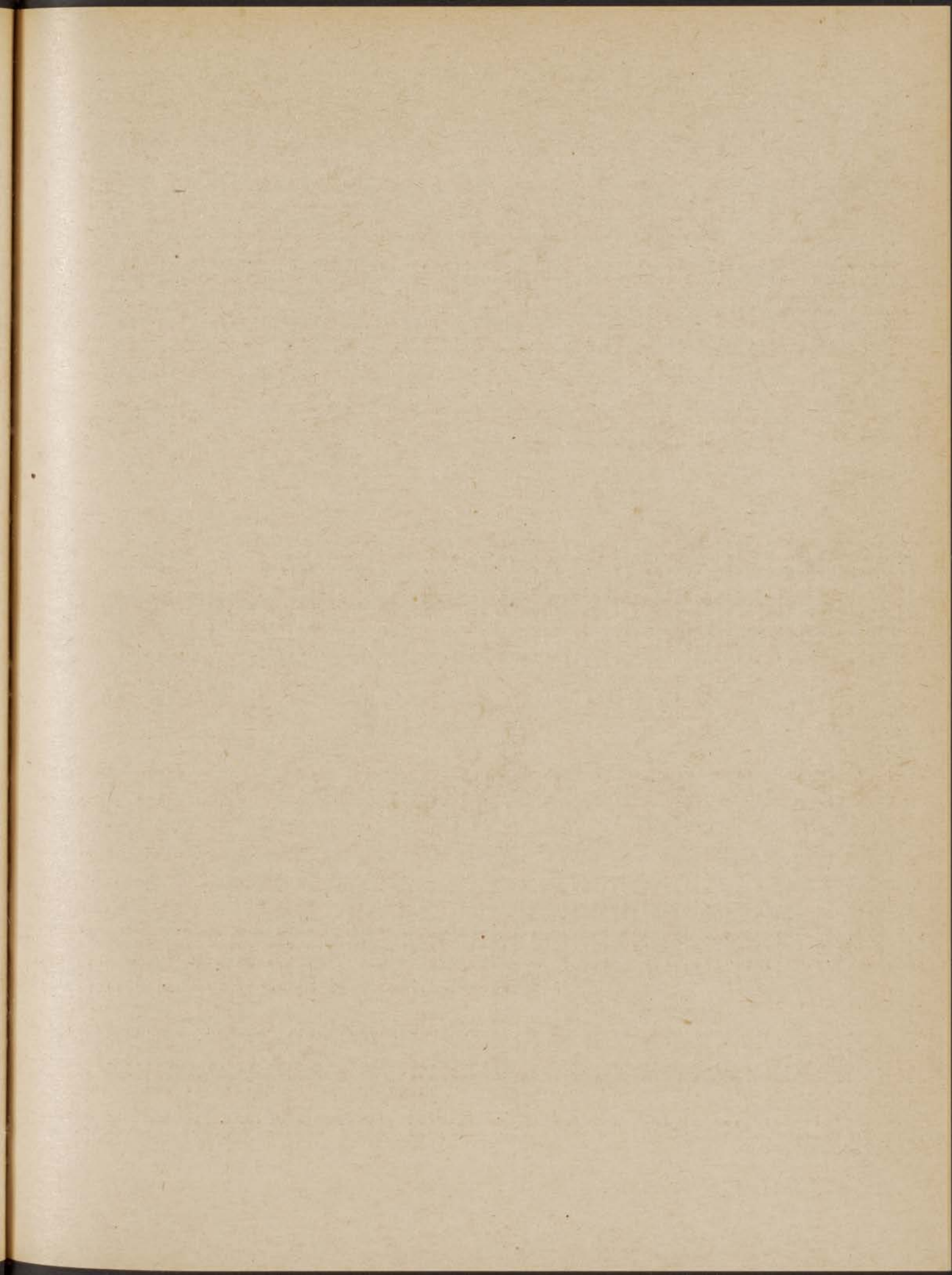
CONTACT PERSON FOR MORE INFORMATION:

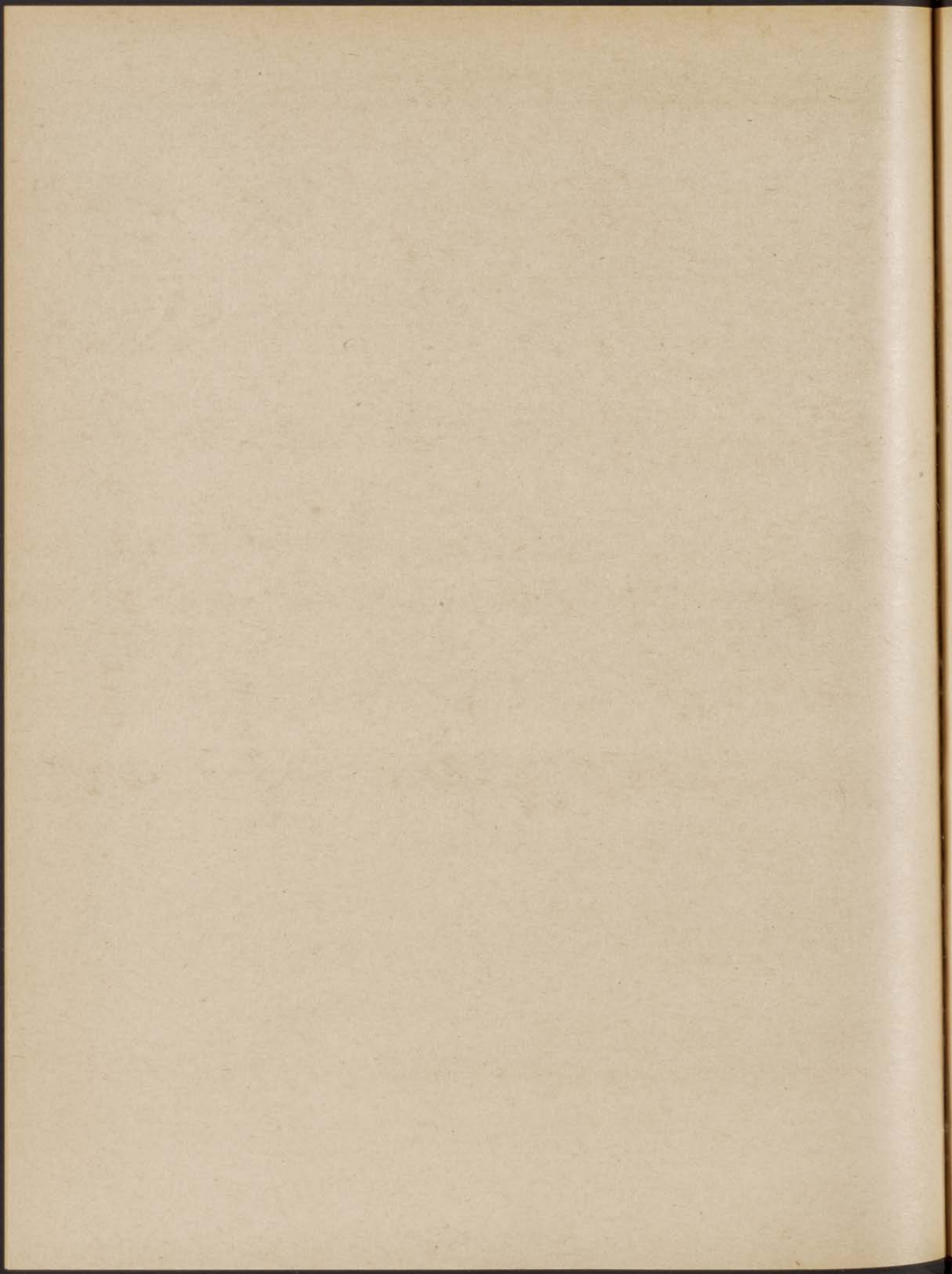
James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-568-1401.

[S-538-79 Filed 3-15-79; 3:23 pm]









SHIP LAWS

THE SHIP LAWS OF THE UNITED STATES

AS AMENDED BY THE ACT OF MARCH 3, 1879

CHAPTER 101
SECTION 1901

SECTION 1902

SECTION 1903

SECTION 1904

SECTION 1905

SECTION 1906

SECTION 1907

SECTION 1908

SECTION 1909

SECTION 1910

SECTION 1911

SECTION 1912

SECTION 1913

SECTION 1914

SECTION 1915

SECTION 1916

SECTION 1917

SECTION 1918

Slip Laws

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96th Congress, 1st Session, 1979

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Residential Conservation Service Program

BOOK 2 OF 2 BOOKS
MONDAY, MARCH 19, 1979



**Part II—DOE: Residential
Conservation Service Program**

**Part III—Interior/BLM:
Management of Federal Coal
Through Leasing or Exchange**

**Part IV—HUD: Low-Income
Housing; Management of
Section 8 Existing Housing
Projects**

**Part V—Commerce/NOAA: Outer
Continental Shelf State
Participation Grants**

**Part VI—DOT/FAA: Review
Conference on Light Transport
Airplane Airworthiness**

**Part VII—DOT/CG: Offshore Oil
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Registered
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MONDAY, MARCH 19, 1979

PART II



DEPARTMENT OF
ENERGY

RESIDENTIAL
CONSERVATION
PROGRAM

Proposed Rulemaking and
Public Hearings

[6450-01-M]

DEPARTMENT OF ENERGY

[10 CFR Part 456]

[Docket No. CAS-RM-79-101]

RESIDENTIAL CONSERVATION SERVICE PROGRAM

Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Department of Energy (DOE) proposes to implement the Residential Conservation Service (RCS) Program pursuant to Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, 92 Stat. 3206, *et seq.* The purpose of the program is to encourage the installation of energy conservation measures, including renewable resource measures, in existing houses by residential customers of larger gas and electric utilities and home heating suppliers. Larger utilities are required and home heating suppliers may volunteer to provide Residential Conservation Service Programs. The State may submit State Plans to DOE. The State Plans would require larger utilities to participate and could include, in the Governor's discretion, nonregulated utilities (e.g., municipalities and cooperatives) and/or home heating suppliers. If a State chooses not to submit a plan, DOE would require regulated utilities in the State to carry out an RCS Program for their customers. When nonregulated utilities are not included in a State Plan, they are required to submit their own plans for RCS Programs.

The proposed rules set out the requirements for State Plans and Non-regulated Utility Plans. In addition, they address certain prohibitions, and exceptions thereto, concerning utilities' supply, installation, and financing of energy conservation measures, and they outline the situations and terms under the which Federal Standby Authority would be exercised.

Under the State Plans (or Nonregulated Utility Plans), larger utilities would be required to offer Program Announcements describing the Residential Conservation Service (RCS) Program to each of their residential customers. These utilities would also be required to make available to those customers lists of contractors and suppliers of energy conservation measures, as well as lending institutions that will finance energy conservation measures. The residential customers would be able to obtain "energy audits" of their homes from these utilities. Each audit would identify with respect to that house costs and savings

involved in the installation of energy conservation measures appropriate for a house of that category in that climatic region. Finally, the larger utilities would offer to arrange the installation and financing of whatever suggested measures the customer desired. The measures installed under the program would have to meet the Federal material and installation standards. Home heating suppliers may offer the RCS Program to their customers if the Governor includes them in the State Plan. The measures installed used under the program would have to meet the Federal material and installation standards.

The treatment of certain costs incurred by a utility in carrying out the RCS Program are in some circumstances mandated by NECPA and the proposed rules; in other circumstances the proper treatment of costs is left to the discretion of the State Regulatory Authority (or the nonregulated utility where the program is carried out by such a utility). The costs of informing customers of the program are to be treated as a current expense; costs incurred by a utility for materials and labor in installing measures must be charged to the customer for whom the work is done. Most of the other costs may be treated in the manner chosen by the State Regulatory Authority (or nonregulated utility).

While there is a general prohibition on utilities themselves supplying, installing, or financing energy conservation measures, there are a number of exceptions to this prohibition. There

is a "grandfather clause" that allows utilities that were so engaged when NECPA was enacted to continue to supply, install, or finance measures. There is an exemption where a State law or regulation in effect when NECPA was enacted either requires or permits a utility to supply, install, or finance measures. There is also an exception for loans under \$300 and the supply, installation, and financing of furnace efficiency modifications, clock thermostats, and load management devices. There is a provision allowing the Secretary of Energy to waive the prohibition where he finds such activity would not be anticompetitive, unfair, or deceptive. Home heating suppliers may supply, install, and/or finance energy conservation measures.

DATES: Written comments must be received by May 25, 1979, 4:30 p.m., e.d.t., in order to ensure their consideration. Hearings will be held at the places and on the dates indicated below.

ADDRESSES: Comments and requests to speak at the hearings should be addressed to: Margaret W. Sibley, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545. See "Comment Procedures" under Supplementary Information below.

HEARINGS: Public Hearings will be held in seven cities, beginning at 9:00 a.m. local time on the dates and locations specified below:

City	Hearing date	Requests to testify to be received by 4:30 p.m., e.s.t.	Hearing location
Philadelphia	April 2-4	March 22	International House, University of Pennsylvania, 3701 Chestnut Street.
New Orleans	April 9-11	March 29	Fairmont Hotel, Baronne Street.
Boston	April 17-19	April 5	J. W. McCormack, Post Office and Courthouse, Post Office Square.
Washington, D.C.	April 24-26	April 12	Room 2105, 2000 M Street, N.W.
St. Louis	April 30-May 2	April 19	Federal Mart, 405 S. 12th Street.
San Diego	May 7-9	April 26	Naval Training Center.
Salt Lake City	May 14-16	May 2	Ramada Inn, 999 S. Main.

FOR FURTHER INFORMATION CONTACT:

James R. Tanck, Director, Residential Conservation Service Program, Office of Conservation and Solar Applications, Department of Energy, Room 2251, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, (202) 376-4708.

Margaret W. Sibley, Office of Conservation and Solar Applications,

Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, (202) 376-4802.

SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. Subpart A—General Provisions and Definitions.
- III. Subpart B—Procedural Requirements for State Plans.
- IV. Subpart C—Content of State Plans.
- V. Subpart D—Nonregulated Utility Plans.

- VI. Subpart E—Supply, Installation and Financing by Utilities.
- VII. Subpart F—Federal Standby Authority and Enforcement Provisions.
- VIII. Subpart G—Renewable Resource Material and Installation Standards.
- IX. Subpart H—Energy Conservation Material Standards.
- X. Subpart I—Energy Conservation Installation Standards.
- XI. Regulatory Analysis.
- XII. Environmental and Urban Impact Analysis.
- XIII. Consultation with Other Federal Agencies.
- XIV. Comment and Hearing Procedures.

I. INTRODUCTION

The Department of Energy (DOE) proposes to amend Chapter II of Title 10 CFR by adding a new Part 456. The proposed regulation will fulfill the requirements of Title II, Part 1, of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619.

DOE has approached the development of the proposed rule intending that the Residential Conservation Service Program ("RCS Program") be a State initiated and directed activity, or in the case of a nonregulated utility not covered by a State Plan, a non-regulated utility initiated and directed activity. Consequently, the proposed rule leaves it to the State to make many of the decisions regarding State functions and utility programs when they develop the State Plan. Similarly, for those nonregulated utilities which submit plans directly to the Secretary, the proposed rule leaves many decisions about the program to the utility in the development of its plan.

The choice between a prescriptive rule or a flexible rule was most difficult. On the one hand, there was a concern that a flexible rule would place too great a planning burden upon States. Furthermore, DOE was concerned that a non-prescriptive rule might result in utility and home heating supplier programs which fail to give full effect to the legislation and the proposed rule. On the other hand, a prescriptive rule appeared to reduce the opportunity for States to integrate the RCS with other State residential conservation activities as well as the chance to adopt a program to meet the particular circumstances of the State.

The approach chosen for the proposed rule takes neither extreme. Instead it reflects DOE's desire to provide States substantial flexibility in developing RCS Programs by setting performance criteria for certain program activities. The proposed rule provides more prescriptive guidance in only those areas in which DOE feels such standards are required to ensure effective implementation of the program.

To alleviate the planning burden upon the States, DOE will provide technical assistance and guidance to

the States in preparing State Plans. DOE recognizes that it must actively provide assistance when States desire it. For example, DOE will develop model energy audit procedures which may be utilized by States (or nonregulated utilities) in their plans. Further, this approach will allow significant interaction between individual States and DOE in developing RCS Programs which are effectively tailored to provide energy conservation services to homeowners in each State.

II. SUBPART A—GENERAL PROVISIONS AND DEFINITIONS

Subpart A contains three general provisions as well as definitions. The first general provision relates to petitions by covered utilities concerning conflicts of laws. Section 220 of NECPA states that nothing in NECPA supersedes any State or local law or regulations except to the extent that the Secretary determines for good cause that such law or regulation either prohibits a utility from taking an action required under NECPA or permits or requires a utility to take an action prohibited under NECPA. These determinations are made pursuant to a petition by a utility. Section 456.102(a) provides the procedure by which such petitions shall be filed. Section 456.102(b) states that the Assistant Secretary for Conservation and Solar Applications will give notice of these petitions to the Governor, State Energy Office, and State Regulatory Authority so that they may comment on the petition. Section 456.102(c) makes clear that once a final order has been issued superseding a State or local law or regulation, that order is effective not only with respect to the utility making the particular petition but also with respect to any other similarly situated utility.

The second general provision relates to appeals. Section 456.103 provides that appeals from orders, findings, or determinations made under § 456.102 or Subpart E are to be filed in accordance with Subpart H of Part 205 of Title 10, Code of Federal Regulations.

The third general provision, § 456.104, finds its basis in Section 211(b) of NECPA. Subsection (c) of this provision makes clear that a utility which meets the definition of a covered utility is fully subject to the requirements of these rules and the applicable plan whether or not it is included on the list published in accordance with this provision.

Section 210 of NECPA defines certain terms used in the RCS Program. Section 456.102 of the proposed rules repeats these definitions and contains other definitions used in the proposed rules. Specific definitions are also provided for the various energy conservation and renewable resource measures.

The definition of "covered utility" finds its basis in Section 211 of NECPA, which limits coverage of the RCS to larger utilities. The term "eligible customer" for the most part, repeats the definition in NECPA of "residential customer." DOE understands this term to include all people who buy gas or electricity from a covered utility, or heating oil from a home heating supplier, for use in a residential building, as defined in NECPA. This includes both owners and tenants.

"Energy audit" is the term used in the regulation to indicate the inspection called for in Section 215 of NECPA.

The proposed rule divides the "residential energy conservation measures" in Section 210 of NECPA into two categories: (1) "Energy conservation measures" which include the measures which conserve energy, but do not use a renewable energy source, and (2) "renewable resource measures" which make use of solar and wind energy. The list of measures specifically identified in Section 210 was expanded to include certain measures which are eligible for residential energy tax credit provided in the Energy Tax Act of 1978. Measures added from the tax credit eligibility list are duct insulation, pipe insulation, thermal windows, thermal doors, and energy usage display meters. Replacement gas burners are not included as a measure in the proposed rule (though they are eligible for tax credits) because these burners usually are installed to replace oil burners in the course of a change from oilfired to gasfired heating. The RCS Program will not include measures which require changing fossil fuel sources. Moreover, DOE has not determined that replacing one gas burner with another saves energy. Further, material standards do not exist for replacement gas furnace burners for gas furnaces.

The term used in NECPA, "devices for modifying flue openings," could literally include vent dampers, flue dampers, barometric dampers, reduced vent connectors, blast gates (fixed flue restrictors), extended draft hoods, and heat exchangers. DOE, however, defined the term "flue opening modifications" to include only vent dampers since a safe and effective installation could be obtained with the development of standards for vent dampers.

DOE determined that flue dampers (automatic dampers located upstream of the draft hood or barometric dampers) and blast gates provided serious potential safety hazards and therefore should not be included in the RCS Program. Barometric dampers, moreover, were not included in the program because the primary use of this device is not to save energy.

Reduced vent connectors, extended draft hoods and heat exchangers were not included because DOE had insufficient information regarding the potential energy savings which might result from installation. DOE will continue to evaluate these devices as new information becomes available.

"Replacement solar swimming pool heaters" are included in the definition of renewable resource measures even though they are not eligible for the residential tax credit. It was determined that solar pool heaters which replace existing nonsolar pool heaters reduce the use of fossil fuels.

Heat pumps are included as a "replacement furnace," even though they are not eligible for tax credits, because heat pumps have been determined to save energy in some locations when they replace electric resistance space heating.

At the present time it is unclear whether or to what extent passive solar space heating and cooling systems will be eligible for tax credits. Whatever the resolution of that issue, DOE believes that the RCS Program should broadly include passive systems as renewable resource measures.

NECPA gives the Secretary the authority to add other energy conservation or renewable resource measures to the list of measures for the RCS Program. We have not evaluated additional measures (other than those addressed herein) for inclusion in this proposed rule. However, we realize there may be others which are worth considering. No measure or product may be treated in this program as an energy conservation measure, a renewable resource measure, or a suggested measure unless the Secretary designates it as such by rule (see Section 210(11)(I) of NECPA). We seek comment on additional measures which we could include in the list in our final rule. In addition, once the rule is final, we will periodically consider adding other measures by rule.

In general, we believe additional energy conservation measures and renewable resource measures should meet the following criteria:

- (1) The measure's primary purpose must be the conservation of energy or the use of a solar or wind energy;
- (2) The measure must be shown to have the potential to save enough energy to pay for its purchase and installation in a substantial fraction of the residential buildings in at least one climate zone.
- (3) The measure must not increase consumption of nonrenewable energy in typical houses in a substantial portion of the United States. That is, we will not add measures which would save energy in houses in some areas of the country but would increase energy

use if installed in houses in other areas.

(4) The measure must be shown to have a significant energy savings potential for the Nation if installed in houses in which it is appropriate.

(5) The measure must not involve switching from the use of one non-renewable fuel to another.

(6) Test data or acceptable methods of calculation must be available to estimate the energy cost savings of the measure in individual houses.

(7) The measure must not present a significant safety, fire, or health hazard when properly installed.

DOE will only consider the addition of generic "measures," not of specific products. That is, a "measure" is a class of products defined by their function, such as "insulation" or "thermal doors."

We have considered allowing States to propose additions to the lists of measures as part of their State Plans, subject to approval by the Secretary. However, since NECPA requires that such additions be made by rule, this alternative would be very cumbersome. Therefore, any additional measures which a State wishes to include in its initial State Plan should be discussed in comments on the Proposed Rule. We seek comments concerning additional measures and concerning our described criteria for additional measures.

Section 215(a)(4) of NECPA requires utilities to provide to eligible customers information on "energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in end use patterns and modifications of household activities which can be employed by the residential customer to save energy and which do not require the installation of energy conservation measures (including the savings in energy costs that are likely to result from the adoption of such suggestions)."

In the Proposed Rule, DOE uses the term "energy conserving practices" in place of "energy conservation techniques." The practices included in the RCS Program (defined in § 456.104) are:

- Changing furnace and air conditioning filters.
- Installing flow restrictors in shower heads and faucets.
- Sealing leaks in pipes and ducts.
- Installing low-flow shower heads and faucets.
- Setting back thermostats at night in winter.
- Setting up thermostats in summer.
- Reducing thermostat settings on water heaters.
- Closing vents, valves and doors in infrequently-used rooms.
- Reducing average thermostat settings in winter.

The practices were included because:

- (a) They save energy;
- (b) They have minimal or no cost (less than \$20); and
- (c) They can be installed or practiced independently of the suggested measures.

The Proposed Rule allows the Governor in a State Plan to add practices meeting these criteria to this list at his discretion. This will enable a Governor to promote those practices which may have particular application to a particular climate zone or construction type.

DOE believes that many energy conserving practices are at least as effective as installing measures which require a much greater investment. It is therefore appropriate to combine information on the practices and the suggested measures in the energy audit and the Program Announcement.

"State Plans" and "Nonregulated Utility Plans" are defined as meeting requirements stated in Subparts B and C for State Plans and Subpart D for Nonregulated Utility Plans in the proposed rule.

The definition of "participating home heating supplier" reflects the voluntary participation of home heating suppliers and the Governor's choice on whether to include home heating suppliers in the State Plan, as provided in Sections 212 and 217 of NECPA.

The "Program Announcement" is the brochure which must be sent to each eligible customer to announce the availability of the RCS Program and provide information on the energy conservation and renewable resource measures. The more general term "program information" describes all the information activities undertaken by a utility or home heating supplier related to the RCS Program. Both terms describe the requirements contained in Sections 215(a) and 217(a) of NECPA. The definition of "Program information" also applies to Section 215(c)(1)(B) of NECPA regarding payment of information costs by utilities under the RCS Program.

The "program warranty" definition meets the requirements of Section 210 NECPA relating to manufacturer's warranties of measures. In writing this definition and the related definition of "useful life," see below, DOE has not used the word "manufacturer." Rather the program warranty of three years applies to any suggested measure which is supplied or installed under the RCS Program. The exact parameters of when a suggested measure is supplied or installed "under the RCS Program" is left to the State's discretion (or nonregulated utility's discretion where that utility is not included in a State Plan), but at a mini-

the program warranty applies to suggested measures the installation of which was arranged by a covered utility or participating fuel supplier. See § 456.205. The word "manufacturer" was omitted from the definition because it was felt that it might be ambiguous as to who the manufacturer of a given measure was. DOE believes that the statutory term was meant to include not only manufacturers of finished products away from the building site but also contractors which assemble components at the building site in order to create a "suggested measure." For example, a contractor installing a solar domestic hot water system might purchase a solar collector from a manufacturer, as well as other component parts such as pipes, fittings, etc., from other manufacturers. But the finished "measure" a solar domestic hot water system is manufactured by the contractor/installer. This finished measure must under the RCS Program have at least a 3 year warranty. Where a finished measure is merely installed by a contractor (for example, mineral fiber loosefill insulation), the program warranty applies to the measure separate from installation, and the contractor/installer need not warrant the installation or the performance of the measure for three years. The contractor/installer in this situation, however, may only use under the RCS program mineral fiber loosefill insulation which meets the program warranty and DOE's material standards, and, of course, he must comply with the installation standards contained in DOE's rules.

The term "Residential Conservation Service (RCS) Program" is used in a generic way to describe the programs of utilities and fuel suppliers established pursuant to an approved State Plan, Nonregulated Utility Plan, or a Federal Standby Plan.

"Suggested measures" are called for in Section 212 of NECPA, which requires the Secretary to identify by rule those energy conservation and renewable resource measures which are appropriate to specific climatic regions and building categories. This term is discussed at greater length below in IV. Subpart C Content of State Plans.

The term "useful life" is used to further define "program warranty" and to indicate that a product must perform the purposes for which it was designed at a level consistent with those purposes.

III. SUBPART B PROCEDURAL REQUIREMENTS FOR STATE PLANS

A. INITIAL SUBMISSION, LEAD AGENCY, AND COVERAGE OF STATE PLAN

Section 456.202 of the Proposed Rule requires that, if the State intends to submit a State Plan, then the Governor or State agency specifically

authorized by State law to submit a State Plan must inform the Secretary within 30 days of promulgation of the final rules of the name and address of the State Agency which will have principal responsibility for the development of the State Plan. This provision will enable the Secretary to provide technical assistance to the appropriate persons in the State, and inform the Secretary of the State's intentions.

Section 212(c)(2) of NECPA permits a Governor to include nonregulated utilities in a State Plan at the Governor's option. DOE has interpreted that language to mean that if the Governor includes any of the nonregulated utilities in the State Plan, then the Governor must include all of them. DOE believes that this interpretation would produce less of an administrative burden for the State and would also eliminate any possible unfair discrimination by the State among nonregulated utilities. Section 456.202(b) reflects this interpretation. It also reflects the requirement of NECPA (Section 212(c)(2)) that the Governor notify the Secretary of his decision to include or exclude nonregulated utilities within 30 days of promulgation of the final rules.

It was Congress's intent, as expressed in the Conference Report on NECPA, not to permit the Governor to regulate the rates of nonregulated utilities by reason of their inclusion in a State Plan. Therefore, whether included in the State Plan or not, nonregulated utilities retain the authority to establish their own rates.

Section 212(c)(3) of NECPA gives a Governor discretion to submit a plan applicable to home heating suppliers. Section 456.202(c) of the Proposed Rule requires the Governor, within 90 days of promulgation of the final rules, to inform the Secretary if home heating suppliers will be included in the State Plan. To give effect to the intent of Congress to encourage a unified State effort, § 456.206 of the Proposed Rule requires that, if the Governor elects to submit a plan for home heating supplies, the plan must be part of the State Plan and be submitted according to the same procedures for submitting the State Plan. The mechanism for coordinating this plan with other elements of the State Plan is left to the discretion of the Governor.

B. COORDINATION AND NOTICE REQUIREMENTS

Section 456.203 contains two requirements for coordination in the development of the State Plan. Subsection (a) requires the Lead Agency to coordinate the Plan with neighboring States which have jurisdiction over any covered utility or participating home heating supplier subject to the Plan.

Subsection (b) requires the Lead Agency, if such agency is not the State Regulatory Authority, to provide a copy of the Plan to such Authority 30 days prior to the public hearing required by § 456.204. In every State, regardless of who is the Lead Agency, the State Regulatory Authority will have a significant role to play in the implementation of utility programs. The purpose of Subsection (b) is to emphasize DOE's interest in cooperation between State agencies in the development of the Plan.

Section 456.204 carries out the requirements of Section 213(a)(7) of NECPA that the State hold hearings on the State Plan. We expect that States will consult very early with utilities, home heating suppliers, consumers, contractors, lenders, and others in the development of the Plan. Because NECPA allows only six months for the development of the State Plan, we decided not to include in the Proposed Rule any prescription of the specific groups which must be consulted or the schedule for their consultation. We invite comment on whether these provisions are adequate to ensure public participation in the development of the Plan.

C. SUBMISSION AND APPROVAL OF PLANS

Section 456.205 contains the schedule for development, submission, approval, and possible disapproval of the State Plan. For the most part, this section repeats the requirements of Section 212(c)(1) of NECPA. Paragraphs (c)(2) and (3) require the Lead Agency to notify the covered utilities and participating home heating suppliers of the approval of the State Plan by the Secretary, to direct their compliance with it, and to certify their compliance to the Secretary within six months. Subsection (e) provides for States to submit amendments to the State Plan to the Secretary. Such amendments shall be considered according to the same procedures and schedule as the original Plan.

D. TENNESSEE VALLEY AUTHORITY

NECPA gives the same authority to the TVA as it does to both a Governor and a State Regulatory Authority, with respect to those utilities over which TVA has ratemaking authority. This creates the problem of overlapping jurisdictions in those States where the TVA-regulated utilities are located. Section 456.207 of the Proposed Rule contains the few provisions necessary to clarify the role of the TVA. In particular, we expect the TVA to coordinate the development of its Plan closely with the Plans of the States in which its utilities are located. We seek comment on additional provisions which may be required to reduce

the potential for conflict or duplication of such Plans.

E. TEMPORARY PROGRAMS

Section 218 of NECPA provides an opportunity for States and utilities to develop programs which do not meet all the requirements of Sections 215 and 216(a) of the Act, if such programs meet certain general requirements enumerated in Section 218. Section 456.207 of the Proposed Rule is based on this Section of NECPA. It permits the Secretary to approve a request for a temporary program for a period not to exceed 3 years from the date of approval. The Secretary may approve a temporary program for three years but may, upon review, disapprove the continuation of the temporary program if it has failed to achieve its required goals.

DOE has not added requirements for approval of a temporary program to those in NECPA since DOE believes that the temporary program requirements as stated in NECPA are sufficient at the present time. Therefore, if the Governor or public utility can demonstrate that such a program will achieve the same or a greater level of installation of suggested measures without adversely affecting price, interest rates or competition, a temporary program is likely to be approved.

DOE recognizes, however, that there may be a need to add requirements to the proposed rule which will improve the ability of the Department and/or the public utility or Governor to monitor the temporary program or ensure a transition to a regular RCS Program at the conclusion of the temporary program's life.

For example, as part of the criteria for approval of temporary programs, DOE could establish specific data collection and evaluation requirements, or a phasing in of program elements to bring the temporary program into eventual compliance with the RCS Program. We seek comment on whether these or any other additional criteria for approval of temporary programs should be added.

IV. CONTENT OF STATE PLANS

EXISTING PROGRAMS

Many utilities and home heating suppliers have been offering services to their customers which are similar to those required by NECPA. NECPA, however, does not exempt existing programs from compliance with its provisions. All programs will have to offer for all suggested conservation measures: Program announcements; energy audits; lists of contractors, suppliers, and lenders; arrangements for installation and financing; and the other services and benefits of Subpart C of the rules. Therefore, all existing

programs will have to be changed to come into compliance with NECPA and the various State Plans, with two exceptions described below.

The two exceptions to this general rule are:

(1) If a State law or regulation was in effect on November 9, 1978, which required or explicitly permitted a utility to sell or install measures or to make loans for the purchase and installation of measures, then the utility may continue those specific activities without change. However, DOE's interpretation of this provision of NECPA (see Subpart E of this Proposed Rule) would still require such a utility to offer all the services required to be in State Plans with respect to all suggested measures (see Subpart C). This interpretation is further explained and elaborated upon below in "E: Supply, Installation, and Financing by Utilities." It should be noted that if an existing utility program of any kind was not required or explicitly permitted by an existing State law or regulation, that program must meet all the requirements of Subpart C, unless the exception below is utilized.

(2) A State or a utility may petition the Secretary for a temporary program, which the Secretary may approve for a duration of no longer than three years, subject to periodic review. Under such a temporary program, a State or utility may be exempted from many of the requirements of these rules for up to three years. In order for the Secretary to approve such a request, the State or utility must demonstrate, among other things, that as many suggested measures would be installed under the temporary program as would be installed under a program meeting the requirements of Subpart C. This provision is § 456.207 of these rules, and is discussed above in "III. E: Temporary Programs."

B. INVESTIGATION AND ENFORCEMENT

Although any State Plan not adequately implemented may be replaced by a Federally imposed plan enforceable by the Secretary, see Subpart F, responsibility for enforcing an existing State Plan rests with the State. Section 213(a)(1) of NECPA provides that no State Plan shall be approved by the Secretary unless it contains "adequate State enforcement procedures * * *." The Conference report emphasizes that enforcement of the State Plan is a State responsibility and that State Plans should contain adequate enforcement procedures before being approved by the Secretary. Therefore, before granting approval, DOE intends to carefully scrutinize State enforcement procedures.

The Proposed Rule permits the State to be flexible and creative in designing a means of enforcing the State

Plan. However, the State must show that its proposed enforcement procedures are adequate and fully capable of implementation. For example, if the State decides to delegate enforcement responsibility over some or all utilities to a local municipality or a State Regulatory Authority, it must state its reasons for delegating the responsibility, the legal authority of the municipality or Authority for carrying out enforcement of the State Plan, the resources which will be made available by the municipality or Authority, the actions the State will take to review the adequacy of enforcement by the municipality or Authority, what the State considers to be adequate enforcement, and what action the State will take if the municipality or Authority fails to enforce the State Plan adequately. The State must explain whether the State Plan will be legally enforceable through existing State law or, if not enforceable under existing State law, what legislation the State proposes to make the State Plan enforceable, and when passage of such legislation is anticipated. The State must also describe the inter-relationship between existing and proposed State and local laws which may affect the enforcement of the State Plan and explain how these laws will be enforced so as to be consistent with the enforcement of the State Plan. Status reports of any pending legislation pertinent to State Plan enforcement procedures will be required through Section 456.318.

Section 456.303(b) provides that State Plans must require utilities subject to the Plan to petition the Assistant Secretary for Conservation and Solar Applications in accordance with § 456.102(a) whenever a utility believes that it is prohibited by a State or local law or regulation from taking any action required by NECPA, the State Plan, or any rule promulgated pursuant to NECPA, or that it is permitted or required by a State or local law or regulation to take any action prohibited by NECPA, a State Plan, or any rule promulgated pursuant to NECPA. As explained above with reference to Subpart A, Section 220(2) of NECPA states that NECPA does not supersede any State or local law or regulation except upon a determination of the Secretary that a conflict exists.

DOE has received several inquiries as to the meaning and effect of this provision of NECPA. The legislative history indicates there was concern that, because of the scope of NECPA and its mandated RCS Program, many areas of State and local law might be affected. Section 220 was, therefore, intended on the one hand to assure that NECPA would not supersede any State or local laws or regulations unless the conflict between them was

irreconcilable, and on the other hand to require that determination of irreconcilability be made by the Secretary (or his delegate) rather than by the various State officials or utilities. Section 220 provides that such determinations will be made upon petition of a covered utility because it was believed that, as the action agents of the RCS Program, those utilities would identify, and be most affected by, conflicts between NECPA and State and local laws and regulations.

The drafting of Section 220 of NECPA does not make explicit that utilities *must* petition the Secretary when they believe a conflict exists, but the legislative history is clear that there was no intent to allow utilities to avoid the mandates and prohibitions of NECPA or rules or Plans promulgated thereunder by merely failing to petition and then claiming they are bound by State or local law or regulation. Accordingly, DOE has in § 456.303(b) of the Proposed Rule required State Plans to require utilities subject to a Plan to petition the Assistant Secretary whenever they believe State or local laws or regulations directly conflict with their duties and prohibitions under NECPA. Nonregulated Utility Plans must contain the same requirement for the nonregulated utility, and any Plan issued under Federal Standby Authority will contain the same requirement. DOE believes such a requirement is necessary to assure that NECPA is adequately implemented.

C. EXEMPTION AND WAIVERS FOR UTILITY SUPPLY, INSTALLATION AND FINANCING

Subpart E of this Proposed Rule prohibits supply, installation, and financing of suggested measures by utilities except in certain exempted situations. Subsection 456.304 (b) and (c) requires the State Plan to describe these exempted activities which will occur in the State and how they will meet the requirements of the State Plan. Subsection (a) clarifies that any covered utility which supplies, installs or finances measures must be included in the lists of such firms in the same way as other suppliers, installers, and lenders.

Subsection (d) contains provisions regarding fair and reasonable prices and interest rates, and the prevention of discrimination, which are contained in Section 213 (a) and (b) of NECPA. Paragraph (d)(1) requires a State agency to review the prices and interest rates charged by utilities. We considered ways of setting standards for "fair prices and interest rates." This paragraph requires the State agency simply to compare the utilities' prices or interest rates with other prices and interest rates charged in the local area

for similar services. We seek comment on this provision.

D. SCOPE OF BENEFITS

In developing this Proposed Rule, we frequently confronted the problem of defining which customers in a State are eligible for which of the services and benefits offered under the State Plan. NECPA clearly requires certain services to be offered to every person defined as a residential customer. These include Program Announcements, on-site energy audits, arrangements for installation and for financing, and lists of suppliers, contractors and lenders. In addition, NECPA requires that a procedure for redress be established for any person alleging any injury as a result of violation of a State Plan. But eligibility for several other services or benefits is not clearly defined in NECPA. In particular, the applicability of the standards for materials and installation is ambiguous, as is eligibility for the procedures for resolving complaints against contractors and suppliers.

The Proposed Rule uses the term "eligible customer" to refer to the broad group of people who must be offered the basic services of the program: The Program Announcement, auditing, arranging, and lists. But the State must define what "eligible customers" must do to be assured that they can take advantage of other benefits established by the State Plan. These benefits, defined in § 456.305(a), are the following assurances:

(1) That the suggested measure purchased by the customer will be covered by a program warranty;

(2) That the suggested measure installed in the customer's home will meet DOE's installation and material standards, and the suppliers, contractors, and lenders who appear on the State lists will perform according to the listing criteria of § 456.312 for that installation;

(3) That the installation will be included in the pool of installations from which random inspections of compliance will be chosen, and with respect to installation of certain measures, that the installation will be subject to a mandatory safety inspection;

(4) That the customer is eligible for the billing and repayment services of the utility or home heating supplier; and

(5) That any complaints which the customer has against the installer, supplier, or lender will be handled through the complaints resolution procedure described in the State Plan.

Subsection (b) sets a minimum criterion of eligibility for this group of services and benefits, which is that any eligible customer who has the installation of a suggested measure "arranged" by the utility (however "ar-

ranged" is defined by the State, utility or fuel supplier) must then be assured these services and benefits. States may establish broader criteria for eligibility for these services and benefits.

In addition, any eligible customer who has the utility "arrange" financing (however the State, utility or fuel supplier chooses to define "arranging") for the supply or installation of a suggested measure must be assured that he or she is eligible for the billing services of the utility and that any complaints against the lender may be handled through the complaints resolution procedure described in the State Plan. We seek comment on these provisions of the Proposed Rule.

We considered prescribing a broader coverage of the benefits and services. The "arranging" service which we have chosen is probably the narrowest criterion available. That is, more customers are likely to request energy audits or receive lists of contractors and lenders than will ask for the arranging service. Three examples illustrate alternative requirements which DOE considered:

(1) *Applicability of the standards for materials and installation.* We considered requiring (and a State Plan could under the Proposed Rule require) either of the following as part of the criteria for listing of contractors:

(a) Every contractor who wished to be listed would agree to meet the standards for every customer who contracts their firm through the list obtained from the utilities.

(b) Every contractor on the lists would agree to meet the standards for every customer who had an energy audit performed.

With both of these alternatives, either the contractor would have to ask the customer, the utility or the fuel supplier whether the customer was part of the program, or the utility or fuel supplier would have to provide this information to the contractor. This requirement would be burdensome and difficult to enforce. On the other hand, a customer who receives the lists from the utility and is told that there are standards for materials and installation may assume that each listed contractor would meet these standards in every case, unless there is a clear disclosure to the contrary.

(2) *Inspections.* DOE believes that random inspections of installations are essential to enforcement of the material and installation standards. Each of the two alternatives listed above for applicability of the standards could also be used as a universe from which the random inspections are selected.

(3) *Complaints Resolution Procedures.* The Proposed Rule requires that any customer who has the installation of a suggested measure ar-

ranged by a utility must have access to the complaint resolution procedures. However, we considered requiring (and a State Plan could require) that any consumer who has a complaint against any contractor who appears on the lists must be eligible for the procedures. Or, any consumer who has a audit provided by the utility could be eligible.

E. SUGGESTED MEASURES AND CATEGORIES OF BUILDINGS

(1) *General Approach.* NECPA requires that our rules designate "suggested" measures by climate zones and categories of buildings based on construction type and other factors we find appropriate. These "suggested" measures must be drawn from the lists of energy conservation and renewable resource measures. The Secretary is given broad authority to determine what criteria are appropriate for designating suggested measures.

The suggested measures are the focus for many program activities. The Program Announcement must address the suggested measures for each category of buildings to which it is sent. Covered utilities and participating home heating suppliers must offer, and perform on request, an energy audit which covers the suggested measures for the home of the requesting customer. Thus, the suggested measures lists help establish the scope of the Program Announcement and the energy audits which utilities and home heating suppliers must offer.

We have used several criteria in developing these lists. These include:

- (1) Ability to save energy.
- (2) Potential to recover cost within useful life through energy savings.
- (3) Commercial availability.
- (4) Effect of other Federal activities (such as low-interest loans and tax credits).
- (5) Effects on other State Energy Programs.
- (6) Department of Energy policy regarding commercialization of renewable resources.

For each energy conservation and renewable resource measure, our principal criterion was cost-effectiveness over useful life. That is, for each measure, the first step in our analysis was to evaluate whether the measure, when installed in a typical house, would reduce energy costs enough over its useful life to pay for its purchase and installation. We used the 1978 energy prices within each State for each fuel. Future energy prices were assumed to rise at the rates predicted by computer simulations prepared in 1979 by the Energy Information Administration of the Department of Energy. The discount rate of future savings and the general inflation rate were both set at 0%. The

useful life of most measures was assumed to be 20 years, though some measures were assumed to have useful lives of 10 years or less. Weather data from NOAA were used for heating degree days, cooling degree days, average temperatures, solar insolation, and wind velocities.

We considered two alternatives to our principal criterion of cost effectiveness within useful life. First, we considered designating a measure as "suggested" if it paid for itself in six years or less. Second, we considered, instead, calling a measure "suggested" if it simply saved non-renewable energy in typical buildings, regardless of cost-effectiveness. We rejected the first alternative because DOE encourages people to invest in energy-saving devices with payback periods of more than six years. We rejected the second alternative because we believe that many people would consider the RCS Program wasteful if it included many measures which do not return their cost within their useful lives.

We had two goals in developing these lists: (1) To keep the cost of energy audits low, as required by Section 210(16) of NECPA; and (2) To encourage consideration by homeowners of as many effective measures as possible, without including measures in the audits which many homeowners would find useless. We have included suggested measures, such as replacement oil burners, whose effectiveness depends on factors which only a trained auditor can determine in an individual house. We have avoided "suggesting" measures which are likely to be effective in only a small fraction of the homes in a particular State or climate zone.

The determination of appropriateness of a measure, or even of its cost-effectiveness, depends a great deal on factors which vary substantially from house to house. Therefore, it is potentially misleading for DOE to call a measure "suggested" because it may not be valuable at all in a particular home, depending on specific factors in that home. Conversely, it is also misleading for DOE not to designate a measure as "suggested" in a particular location if it is valuable in a large fraction of that area's homes. Since the principal legal effect of the designation of "suggested" is to require utilities to offer on-site inspections of that measure, our lists include more measures than they would if strict cost-effectiveness were our only criteria. Also, in choosing the "typical" conditions to use in determining cost-effectiveness, we have generally chosen conditions which are favorable to the measure.

With most suggested measures, we faced the problem of choosing which type of that measure to assume in per-

forming calculations, for example, choosing between wood-, aluminum-, or vinyl-framed storm windows. For most measures, though, the energy-saving performance of the various types is substantially the same. For example, adding R-19 ceiling insulation saves the same amount of energy whether it is cellulose, fiberglass, vermiculite, or any other type. While the cost of the different types may vary, competitive products generally have competitive prices. Thus the particular choice of type of measure did not significantly affect the calculations in most cases. Where there existed a substantial difference in price, for example, vent dampers and replacement oil burners, we chose types which are commonly used or available and are of high quality. For each suggested renewable resource measure, a system was chosen for which performance estimates are available and which is representative of high quality products which are commercially available. Passive solar devices presented a particular problem, since the types of passive devices have substantially different characteristics. As explained below under "(2): Categories of Buildings" and "(4) Suggested Renewable Resource Measures," we have designated passive devices as suggested for all locations and housing types.

For certain measures, we assumed installation by the homeowner, in determining the cost of the measure, for purposes of measuring cost-effectiveness. These included caulking and weatherstripping, water heater insulation, ceiling or attic insulation, floor insulation, duct insulation, reflective or absorptive films, and clock thermostats.

The detailed information used in the calculations to determine the suggested measures is available in the public docket for the Proposed Rule.

(2) *Categories of Buildings.* Section 212(b)(1) of NECPA requires the Secretary to determine the categories of residential buildings by which measures are "suggested." These categories are to be determined "on the basis of type of construction and any other factors which the Secretary may deem appropriate." These categories have two principal effects in the program: (1) The Program Announcement distributed to any customer by a utility or home heating supplier must list the suggested measures for the category which includes the building owned or occupied by that customer. It must also state the energy cost savings of each suggested measure installed in a typical building in such category. Thus, for example, if we establish three categories which affect a particular utility, that utility must either be able to divide its customers into those three categories and send a separate

announcement to each, or distribute the same announcement to all customers, showing the suggested measures and their savings for each of the categories. (2) Similarly, a utility or home heating supplier must offer to each customer an energy audit of each measure "suggested" for the category of building in which the customer lives.

The complexity of these requirements in NECPA strongly indicates that our categories should address only those factors which grossly affect the appropriateness of each measure. Section 456.306(b) contains our proposed categories. We have found that the appropriate factors for establishing categories vary between classes of measures. We seek comment on the effect and validity of the categories we have chosen.

Paragraph (b)(1) establishes the categories for all energy conservation measures. Since cost-effectiveness is the principal criteria by which we analyzed measures, we evaluated those factors which affect cost-effectiveness. We found that construction type, such as "ranch-style" or "Cape Cod", is virtually irrelevant to cost-effectiveness of conservation measures. The factors which were most important were: (1) Type and cost of heating fuel; (2) presence of air conditioning; (3) climate; and (4) the characteristics of the relevant construction components of buildings, such as whether the walls are solid brick or wood frame, or whether the floor is a concrete slab on grade or a wood floor over a basement.

We have included part of the first factor, type of heating fuel, as the sole determinant of building category for energy conservation measures, because it so strongly influences cost-effectiveness and is simple for a customer to identify. The second factor, presence of air conditioning, was included or excluded as a characteristic of the houses which we simulated, depending on the climate zone. That is, in climate zones with substantial cooling requirements, we assumed the simulated house had air conditioning in evaluating the cost-effectiveness of each conservation measure. The third factor, climate, is a principal division of the lists of suggested measures in addition to (and separate from) categories of buildings. Finally, the fourth factor, characteristics of construction components, was rejected because of the substantial complexity it would add to the categories. Consideration of this factor would require separate categories for each conservation measure, and substantially increase the complexity of Program Announcements which a customer would receive.

A similar analysis of appropriate factors was performed for each renewable resource measure. We found, however,

that we could not avoid establishing separate categories for renewable resource measures. Paragraph (b)(2) establishes water heating fuels as the categories for determining whether or not Solar Domestic Hot Water Systems will be suggested. Though total hot water consumption is also a crucial determinant of cost-effectiveness, this factor was not used since it is more easily considered by the on-site auditor rather than by our rules.

Paragraph (b)(3) establishes three categories for active solar heating systems. These categories also apply to combined active space heating and hot water systems. We evaluated the characteristics of twelve building types and their effect on these measures. We found that, in general, the most important determinant of cost-effectiveness of these measures in a building at a particular location is total heating load. The three categories we have established are broadly representative of the size of heating requirements, and are also readily recognizable to the average customer. We invite comment on the effect and correctness of this decision.

Paragraph (b)(4) establishes one comprehensive category for passive solar devices. Though many construction characteristics greatly affect the appropriateness of this measure, the great variety of passive devices and their characteristics require that either we establish a complex set of categories for the various passive devices, or that we establish only one category and leave the determination of appropriateness to the on-site auditor. We seek comment on our decision.

Paragraph (b)(5) also establishes one comprehensive category for wind energy systems. Construction type is much less relevant to evaluating wind systems than is cost of electricity or average wind speeds. As described below we have assumed in evaluating wind systems by climate zones that adequate siting is available for a wind system. We seek comment on our decision.

Finally, paragraph (b)(6) establishes simple and relevant categories for solar pool heaters. We expect that where solar pool heaters are suggested measures, Program Announcements will simply show what the energy cost savings are for a pool with each fuel used in that area for pool heaters.

(3) *Suggested Conservation Measures.* The lists of suggested conservation measures are divided by States and climate zones. They are divided by States for the convenience of interested persons as well as for those who will write plans and implement programs, and because the lists are based on fuel prices which vary by State. There are ten climate zones. They are the same as those developed for DOE's

Building Energy Performance Standards, except that additional zones have been created to account for finer divisions of air conditioning requirements.

We used two computer simulation models to perform analyses of cost-effectiveness. The first, called "Updated Project Conserve", determines the changes in heat loss through the envelope of a building (i.e., wall, windows, ceiling, etc.) due to the addition of insulation, window modifications, and caulking and weatherstripping. The second model, developed especially for the task of suggesting measures, analyzes the effect of changes in heating system efficiency and duct insulation. This second model also evaluates interactions between the savings resulting from measures when they are installed in combination. In developing the list of suggested measures, however, a complete analysis of all possible interactions was not performed.

We believe that these two models are substantially accurate in evaluating energy savings for all suggested measures. We continue, however, to examine the usefulness of more sophisticated simulations, particularly with respect to window systems. We invite comment on the accuracy and appropriateness of our approach.

Though the fuel prices and climate assumptions we have used vary widely across the United States, and these variances have been incorporated into our calculations, we have used a single cost of purchase or installation for each conservation measure. This is due to the cost to DOE of collecting accurate purchase and installation price information by State or region. Also, we have found that the price of many measures varies as much within any geographic area as it does between areas. We seek comments as to the accuracy and effect of our price assumptions.

Water Heater Insulation. The categories of buildings for conservation measures (i.e., space heating fuels) are not directly relevant to the cost-effectiveness of water heater insulation. What is relevant is the location and model of the water heater and the fuel it uses. We have assumed favorable location and model in our simulation. And we have further assumed that the water heating fuel is the same as the space heating fuel. This assumption is supportable because Census Bureau construction data indicate it is true for a majority of houses. In any case, water heater insulation appears to be cost-effective with respect to most fuels in most parts of the country. We seek comment on our approach to this measure.

Replacement oil burners. This measure is suggested for all oil-heated homes in every part of the country.

Our alternative was to select categories of oil-heated buildings in which replacement of burners is cost-effective and designate burners as "suggested" only in such buildings. However, two important determinants of the cost-effectiveness of a replacement oil burner, the quality and the efficiency of the existing burner, are unknown without an efficiency test by a trained auditor. Therefore, we have designated oil burner replacement as a suggested measure in every oil heated home in order to assure that a test of the efficiency of oil furnace is a part of an audit in every oil heated home.

However, this approach has an important drawback. It implies that the Department of Energy "suggests" replacing the burner in every oil furnace in the country, which is incorrect. Many, and perhaps most, oil furnaces can be made and kept efficient through steps much less costly than burner replacement. These steps include adjustment of nozzle size, cleaning and tuning, and replacement of parts (but not all) of the burner. We considered including these steps as "energy conservation measures", but NECPA (Section 210(11)) requires that such measures be warranted by manufacturers for at least three years. It is possible that replacement parts could meet this criterion, and we are considering adding this step to the list of measures. We are also considering expanding the definition of "energy conserving techniques" to include annual cleaning and tuning of oil furnaces. We would, however, like to require a thorough inspection of an oil furnace by a trained technician as part of every audit of oil heated homes. We seek comment on the correctness and effect of this treatment of oil furnaces in the Proposed Rule, especially with respect to what impact this treatment has on the cost of audits for oil heated homes.

Flue opening modifications. We have defined this term to include only vent dampers, and propose that it be a suggested measure for every gas or oil heated home in the country. As with oil burner replacement, this approach has the drawback of implying that DOE "suggests" installation of vent dampers in all such homes, which is incorrect. However, each of the factors which affects the cost-effectiveness of vent dampers is difficult to take account of in our lists. Though location and configuration of the furnace are essential factors in computing cost-effectiveness, their use would require that we establish a special set of categories for vent dampers. Also, the auditor can easily and most readily evaluate these factors and advise the customer of the appropriateness of a vent damper. In addition, we are considering prohibiting installation of a

vent damper on furnaces in unheated spaces as a part of our required installation standards because in such circumstances they do not save energy.

Another relevant factor for determining the cost-effectiveness of vent dampers is the total size of the heating bill. The savings from installation of a vent damper is a fixed percentage of the total fuel bill. This percentage is approximately the same for all furnaces with the same characteristics in any given climate. Thus, we could determine the minimum size of the fuel bill needed to assure cost-effectiveness, and establish two categories of buildings for vent dampers: (1) Those with fuel bills over the minimum, for which vent dampers would be suggested; and (2) those with fuel bills below the minimum, for which vent dampers would not be suggested. However, these categories would complicate the Program Announcement, would change if a customer took other steps to reduce fuel use, and are hard to use for customers who use their heating fuel for other purposes and receive only one billing from their utility or fuel supplier. We seek comments on our decisions regarding vent dampers, and on alternatives.

Load management devices. This measure is suggested for all buildings serviced by an electric utility which offers load management rates. The categories of buildings by which it is suggested are the same as for other conservation measures, but the geographic and climatic zones are irrelevant. We have performed no analysis of cost-effectiveness for this measure. We seek comment on the effect of this treatment of load management devices.

(4) **Suggested Renewable Resource Measures Wind Energy.** The economic effect of using wind energy for residential buildings was assessed on a region by region basis, using a computer process prepared for this purpose. We used performance data for a model wind system which is representative of a class of high-performance, low-cost, small wind energy conservation systems. We originally used NOAA-provided wind data for the region and computed the average energy that would be generated in a typical year by the model wind system operating in the NOAA-wind regime. The cost of the wind system was then compared with the cost of the energy delivered to the residence, to ascertain if the wind system will save enough to return its cost within its useful life. The economic analyses were performed using electricity as the displaced non-renewable energy.

The analyses resulted in very few regions demonstrating sufficient economic benefits to justify the investment in a wind system. But, since the

NOAA-provided wind data was obtained predominantly at airports which are usually in the calmer portion of each region, we "enhanced" the NOAA-provided wind data. That is, the wind regime was shifted by 40% to increase the intensity of the wind used in each analysis to reflect the potential for greater winds at the customer's residence than at the NOAA data site. The economic analysis was repeated using the enhanced wind data. A number of regions were identified as areas in which wind energy would be economically attractive. We used the enhanced wind data results in the Proposed Rule.

Consideration was given to further expanding the geographic scope of wind energy suggested measures. This possibility was rejected, however, because it might substantially increase the number of wind audits requested, due solely to the DOE finding of potential economic application. The cost of providing those audits would be unduly burdensome on the utilities, fuel suppliers, and their customers because few such audits would provide positive results to the customer. DOE solicits comments on this decision.

Solar Space Heating. The use of solar energy to heat a residence is currently expensive, relative to the non-renewable energy saved. The difficulty of finding situations in which solar space heating was cost-effective was confirmed by computer analyses comparing solar-collected energy with electricity as the non-renewable energy to be displaced. Very few combinations of electricity cost, insolation, climate and heating load resulted in a positive determination. Other non-renewable fuels are generally less costly than electricity; thus their potentials for economic replacement by solar energy for space heating is lower than that shown by electricity. As a result, solar space heating is a suggested measure for only a few locations and categories of buildings.

Passive Heating and Cooling Systems. Passive heating and cooling implies the use of natural forces in the environment—including solar insolation, orientation, winds, night-time coolness, and the opportunity to lose heat by radiation to the night sky—to heat or cool a building. Normally, this heating or cooling is done without the support of mechanical means to transport the thermal energy. Rather, it is an integration process to utilize natural forces for human comfort within a man-made environment. (It is intended, however, that so-called hybrid systems that make limited use of small fans to move air from storage to use are included within this definition.) The performance of some passive systems can be enhanced significantly by the cooperative behavior of the struc-

ture's occupants. Moreover, it is plausible to install more than one solar measure in a structure. More than one passive measure can be installed, as can more than one active measure; active and passive measures can also be installed in combination.

There are many techniques and design concepts which can make effective use of the environment for residential building heating and cooling. The cost of introducing a particular passive solar measure into an existing residential structure is significantly dependent upon the design and construction of the particular structure. The energy-saving effectiveness of a passive measure is a reflection of the design and construction of the measure, itself, of how the structure's occupants live with the measure, of the orientation of the structure with respect to the sun, shade trees, other structures and prevailing winds, of steps taken or provision made to retain the collected heat or coolness once collected and, most importantly, of the local climatic conditions. Thus, particular conditions of a structure, its design and occupants, climatic location and its siting are dominant in determining the economic applications of passive measures.

Passive measures of some kind can be appropriately applied in any climatic region, if the measure is properly matched to the structure, the site and the local climate. Thus, passive solar measures are suggested measures for all regions and housing types.

We solicit comments on this approach, particularly with respect to the effect it may have on the cost of audits, as well as the difficulty of dealing with the variety of types of measures in the Program Announcement and the energy audit.

Domestic Hot Water (DHW). It was determined that solar heating of domestic hot water should be a suggested measure to replace any non-renewable fuel type for any climatic region of the country in which it economically displaces at least one non-renewable type of fuel. That is, if solar heating of hot water is found to be an economic investment in a region when it replaces any fuel, it is suggested for application in that region for all fuels.

The first step in this determination was to perform a computer analysis of the cost and savings of solar DHW for all climatic regions and displacing all types of non-renewable fuels. A high-quality solar system was used as the basis for this assessment, as were insulation and climatic data representative of each region, and average fuel costs for the State. An average family size with average hot water needs was considered by the computer analyses.

The computer analyses showed solar DHW to return its cost, using electric-

ity as the displaced fuel, in most regions; the principal exceptions were the Pacific Northwest and those regions served by the TVA. Solar DHW appears to be economically viable as an alternative to natural gas in only a very few regions. It appears to be economically attractive compared to oil in more regions than natural gas and less than electricity.

Solar DHW is one of several technologies which DOE has chosen for a special marketing effort as part of our "Commercialization" program. We wish to increase the public's consideration of these devices. In addition, with other energy conservation and renewable resource measures, the assumptions we make in the computer analyses are not likely to be appropriate for all customers in the affected regions. For example, there are customers with natural gas water heaters whose hot water usage is high enough to justify a solar system, even though solar systems are not attractive for the average family in that location. We have therefore decided to include solar DHW as a suggested measure in a region if it appears economically attractive with respect to any fuel.

This decision furthers DOE's commercialization goals by requiring utilities to offer audits of solar DHW to all customers if it appears economically attractive for an average family in that region using any fuel. That is, for example, audits of solar DHW will be required to be offered to customers whose hot water is heated by fuels other than electricity, even though in that area our computer analyses showed solar DHW to be cost-effective only against electric hot water systems. We seek comment on the effects of this decision. In particular, we seek comment on two questions: (1) How is this decision likely to affect the cost of audits and the State's decision, allowed by § 456.307(a)(1), on whether to include solar DHW as part of the same audit with suggested conservation measures? (2) Will our decision on suggesting solar DHW have a net positive or a net negative effect on the acceptance of solar DHW? We are concerned that some customers may be put off by the results of an audit of solar DHW, if it is known in advance of the audit that such systems are unlikely to be cost-effective for that customer's category of building.

Swimming Pool Heaters. This measure is suggested for all categories of buildings where heated pools are present. Because of design, size, and location differences, it is not possible to model swimming pool heater applications. Several local jurisdictions are requiring pool heaters to use renewable resource energy and many comments received in response to the Advance Notice of Proposed Rulemaking indi-

cated that solar pool heaters should be considered. We seek comment on the inclusion of this measure on the list of suggested measures.

F. PROGRAM ANNOUNCEMENT

NECPA requires each RCS Program to include provisions to "inform" each of its eligible customers of four items:

(1) The suggested measures for the category of buildings in which the customer lives;

(2) The savings in energy costs likely to result from the installation of the suggested measures in a typical building in that category;

(3) The suggestions of energy conserving practices developed by the Secretary, including an estimate of the savings from these practices; and

(4) The availability of energy audits, arrangements for installation and financing of suggested measures, and lists of suppliers, contractors, and lenders.

DOE has repeated these requirements in § 456.306 of the Proposed Rule and has added several others described below. We have required that this information and the offers of services be included in a Program Announcement which the utility or fuel supplier sends to each eligible customer. DOE believes that this brochure should serve to motivate the customer to request the services provided under the Program. It must be sent to each customer within six months of the approval of the State Plan. We expect that, in general, these brochures will be developed by each covered utility and participating fuel dealer after the State Plans are approved.

Subsection § 456.306(a) describes the minimum content of the Program Announcement, and requires that it be sent every two years before January, 1985. Paragraphs (1) through (4) set the minimum information required about the suggested measures and about the energy conserving practices. We have considered but excluded any requirement that cost estimates be included in addition to savings estimates. If the customer does not have an audit performed, cost estimates could be important to customers in deciding which of the measures to purchase. But such estimates could be misleading and could affect prices in local markets. Also, we do not intend that the Program Announcement be a basis for investments, but only a means of motivating customers to seek further services. We seek comment on whether costs should be included in the Program Announcement.

The savings estimates are to be expressed in dollars because we believe that this is the best form to use in motivating customers to take action, and because this is the most literal interpretation of the statute. We invite

comment on whether percentage savings estimates ought to be allowed in place of dollar savings estimates. (It should be noted that the proposed Rule would allow percentage savings estimates as an addition to the dollar savings estimates.)

We considered prescribing substantially more information to be included in the Program Announcement, but decided to leave these items to the discretion of the States or the utilities, as determined in the State Plan. Among the items we considered but did not include in the Proposed Rule are:

(1) The simple payback period of each measure;

(2) The expected useful life of each measure;

(3) An estimate of the total savings likely to result if all suggested measures were installed in a house which had none of the measures to start with (this total would be less than the sum of the individual savings);

(4) A requirement that the suggested measures be listed in order of their simple payback periods;

(5) Other more complex measures of cost-effectiveness for each measure.

In general, we rejected each of these for two reasons; first, as stated above, the principal purpose of the Program Announcement in our view is to motivate the customer to request further services, rather than to serve as a guide for investing; and second, we believe each State should have the flexibility to include whatever additional information it and its utilities and fuel suppliers believe to be pertinent to their particular programs.

Paragraphs (a)(5) and (6) require the Program Announcement to include information about each of the services included in the program. We are concerned that the customer be fully aware from the outset of which program services are available under which circumstances. We seek comment on whether Paragraph (a)(6) should be modified to require a description of each of the benefits as well as the circumstances under which they are available.

Paragraphs (a)(7) requires a disclosure in the Program Announcement to the effect that the savings estimates shown are not likely to be the same as those the customer can expect in his or her own house. We believe it is critical not to mislead the customer into thinking that these estimates are more accurate than they actually are. We invite comments on the particular wording which we have included, though the Proposed Rule allows equivalent statements.

Paragraph (a)(8) requires an explanation be made by electric utilities to all customers for whom load management is not a suggested measure that they are not suggested measures for

their area because they would need certain rates which are not presently available to them in order to save money from installation of load management devices. We believe it is important to make customers aware that there is a conservation potential from such devices. The Public Utilities Regulatory Policy Act (PURPA) requires each State to hold hearings on certain alternative ways of setting electricity rates, some of which would make load management devices economically attractive to residential customers. The Program Announcement is a convenient vehicle for increasing public awareness of this conservation potential. We seek comment on this provision.

Paragraph (a)(9) prohibits any advertising for any suggested measures or for any contractor, supplier, or lender, including the utility or fuel supplier itself. To allow such advertising, particularly by utilities, might adversely affect competition, and might imply to some customers an endorsement by DOE of the advertised products or firms.

Paragraph (a)(10) prohibits the addition of any information in the Program Announcement about products which are not energy conservation or renewable resource measures or energy conserving practices. To allow such information would give the impression to many customers that DOE, the State, the utility, or the fuel supplier endorsed such products, when this may not be the case. There may be advantages, however, to allowing some information of this nature, and we invite comment on the prohibition.

We consider requiring that the Program Announcement contain information about two classes of energy saving products in addition to the "suggested measures." One would be those products which are designed to save energy but which do not save enough energy in typical houses in the utility or fuel supplier's service territory to pay for themselves over their useful lives. The second class would be those products which save energy, but which are not principally designed to do so, such as drapes and carpets. We believe that objective information about such products might be useful to customers, particularly if they were clearly separated from the "suggested measures." However, we decided against requiring or allowing their inclusion because to add too much information would divert attention from the measures we wish to emphasize and might be confusing.

Subsection 456.306(c) sets the minimum standards for the calculation procedures used in estimating the savings of suggested measures in the Program Announcement. The Proposed Rule requires that the prices on which

these estimates are based be representative of those for the location of the customer. It should be possible to use typical fuel rates for the location of the customer, and to collect cost information about suggested measures which is an average of some broad geographic area which includes the customer's home. Paragraph (3) requires that a consistent procedure be established in the State Plan for making these estimates. In particular, if a customer receives more than one Program Announcement, the estimates in those announcements must be the same. This will require that the State develop either the estimates or the calculation procedure which the utilities and fuel suppliers use, or that there be sharing of data among utilities and fuel suppliers where service territories overlap.

We considered a much more prescriptive requirement for estimating savings of suggested measures. DOE is completing a recommended procedure for calculating and presenting the savings estimates that must be in the Program Announcement. We considered requiring that every Program Announcement use the estimates which this calculation procedure will produce, based on fuel and materials cost estimates which the States, utilities or fuel suppliers would collect immediately prior to production of the Announcement. However, we decided that many States may have their own calculation procedures which would be just as valid as that which we are developing. Our basic goal is consistency of estimates provided to an individual customer, which should be achieved by the requirements of paragraph (a)(3). We invite comment on this alternative.

We have not prescribed the type of each suggested measure which must be used in calculating energy savings. This selection will be made by the State and is a necessary part of the consistency requirement of subsection 456.306(c). We recognize that variations in types of measures can lead to inconsistencies within or between States, particularly with respect to passive solar devices. We seek comment on this problem.

We also considered prescribing other information to be included in the Program Announcement such as:

(1) Information about Federal and State tax credits for suggested measures;

(2) Information about other Federal, State and local conservation programs which the customer may be eligible for; and

(3) An offer of information about self-installation of suggested measures, for those customers who decide to install measures after reading the Program Announcement.

We concluded that it would be unwise for us to require such additional information since it might clutter up the Program Announcement and confuse customers. However, States may consider distributing such information through their programs.

Subsection 456.306(d) repeats the requirement of NECPA for an offer of services to people who become eligible customers of a covered utility or fuel supplier after the program begins. We have added a requirement that the utility or fuel supplier offer to such customers the results of any audits which have been performed on their new residences. The law requires that such results be retained for five years and be made available to new customers without charge. Our added requirement merely assures that the new customer will be aware that an audit has been performed on his or her residence.

G. ENERGY AUDITS

NECPA requires each covered utility and participating fuel supplier to offer an on-site energy audit of the residence of each eligible customer, to estimate the cost of installing the suggested measures in that residence and the savings in energy costs which are likely to result. Such audits may be done directly by the utility or fuel supplier with its own personnel or through one or more auditors under contract. The initial offer of this audit must be made to every eligible customer within six months of approval of the State Plan. This Proposed Rule requires the Program Announcement described above to be the vehicle for this offer.

NECPA is based in part on the assumption that large numbers of people will request these audits and then make decisions based on the information they receive. DOE believes that the information provided through this audit is the central motivating force of the Residential Conservation Service Program. We also recognize that this audit is likely to be the most expensive part of the program. Our goal has been to find the right balance between assuring that audits will meet certain minimum levels of quality and leaving room for innovation by States, utilities and fuel suppliers. We have devoted a great deal of attention to this section of the rules and invite detailed comments on our assumptions and on the specific provisions in the Proposed Rule.

In developing these rules, we seriously considered prescribing the requirements for audits in considerable detail. We concluded that a less prescriptive approach was advisable. We have decided, however, to develop a model auditing procedure. We believe that this will be helpful to States which do not

have their own auditing techniques available. This audit will exceed the minimum requirements of this Proposed Rule for calculations and results. We hope that it will be the basis for many of the programs run by utilities and fuel suppliers.

We have chosen to use the word "energy audit" where NECPA uses the word "inspection." We believe energy audit is the most common term used to describe this activity. However, we invite other suggestions, and realize that various States, utilities and fuel suppliers may choose to use other terms in the programs they offer to customers.

We have chosen a limited definition of "energy audit," one which is based solely on the activities required by the legislation. We have considered including two additional concepts in the definition: First, a requirement for a determination of the total heating and cooling requirements of the building in question; and second, a specification of the measures which an energy audit must address. The first concept was rejected because we do not feel it is always necessary to determine heating and cooling requirements in order to estimate costs and savings of suggested measures. The second concept was left out of the definition but included in the requirements for energy audits under the program, described below.

Subsection 456.307(a) describes the two types of audits which the utilities and fuel suppliers must offer, at a minimum, under the State Plan. Each customer must be offered two audits: one which addresses all suggested energy conservation measures and only energy conservation measures, with the possible addition of solar water heating; the other is an audit of the suggested renewable resource measures, which may at the discretion of the State be offered individually for each measure.

We believe that, by allowing utilities and fuel suppliers to offer only one complete audit of all measures, the cost of the audit would increase to such an extent that customers would be discouraged from requesting one. Our analysis indicates that the cost of an audit of the conservation measures alone would be approximately \$25-\$50, depending on the number of suggested measures in the locality. Adding solar water heating to this audit would not increase its cost significantly, so the Proposed Rule allows States to include them with the conservation measures. Adding other renewable resource measures, however, would have a more substantial effect on the cost of the audit, and thus we have separated these measures. (See the summary of the Regulatory Analysis below.)

We have required that all the suggested energy conservation measures,

such as insulation and furnace improvements, must be included in one audit. This is because we believe that all suggested energy conservation measures must be considered together by the customers to encourage investment in the most effective measures first.

We considered two broad alternatives to this division of audits. First, we considered allowing States to decide whether to offer only one audit which covered all suggested conservation and renewable resource measures. This type of audit is the most literal interpretation of the statute. Second, we considered allowing States to divide the audits into whatever pieces they or the utilities and fuel suppliers found appropriate, or even to allow the eligible customers complete discretion in deciding which measures he or she wanted analyzed. We have rejected each of these two approaches in favor of that contained in the Proposed Rule, but seek comment on these alternatives.

NECPA prohibits a utility from being required to conduct more than one inspection of a residence. We do not believe our two audit approach is inconsistent with this provision. We interpret NECPA's provision to prohibit requiring a utility from making the same inspection twice, not to prohibit separate visits by different auditors to address separate measures.

Paragraph (b)(1) requires the State Plan to specify how soon a utility or fuel supplier must perform an audit after the customer requests it. This time limit must be reasonable, based on such factors as the resources of the utilities and fuel suppliers and the needs of the customers. We considered establishing a limit, such as sixty days, in the Proposed Rule, but decided that there could be legitimate justification for alternative time periods. We believe some time period must be established so that utilities and fuel suppliers can know what size staff to hire and how much promotion to undertake, and so that customers will have a reasonable expectation of prompt service.

Paragraph (b)(2) requires States to prohibit other methods of estimating conservation potential as preconditions for a customer to receive an energy audit under the program. In particular, we require prohibition of what are known as Class "B" audits. A Class "B" audit is one which requires the homeowner to fill out a questionnaire asking for the measurements of the house, rather than involving a visit to the house by a trained auditor. This provision does not prevent States or utilities and fuel suppliers from offering such services in addition to on-site audits or State Regulatory Authorities from allowing different

charges for an audit depending on whether a Class B audit is accomplished first. We believe this provision to be necessary to carry out the law's intent that each customer who wants an on-site audit receives one upon request.

We considered requiring that a customer receive an energy audit of all suggested conservation measures *before* receiving an audit of any renewable resource measure. Conversely, we also considered prohibiting the use of such a precondition for renewable resource audits. The Proposed Rule is silent on this point, and thus allows States to choose whether to establish such a requirement or prohibition. We invite comment on these alternatives.

Paragraph (b)(3) prohibits utilities from discriminating unfairly among its eligible customers in providing energy audits. This provision follows from the NECPA provision (section 213 (b)(2)(A)) which requires States to prohibit unfair discrimination by utilities among its customers under this program. However, the Proposed Rule does leave substantial flexibility to utilities in the conduct of their audits. One example of a distinction which is not unfair is allowing utilities to provide audits to customers in certain neighborhoods at certain times to reduce travel times for auditors.

Paragraph (c)(1) requires the auditor to present certain results of the audit to the customer, and requires that these results be in writing. In addition these results must be presented in person. DOE believes that in-person presentation of the results will be more effective in persuading customers to take action than would mailing the results several days or weeks after the visit. Our investigations indicate that it is possible to complete an audit, including the necessary calculations, in one visit to the home. However, the Proposed Rule would allow the auditor to return for a second visit if the calculations were to be performed away from the home. We recognize that this provision will have a substantial effect on auditing procedures and invite detailed comment on it.

Subparagraph (c)(1)(i) requires the auditor to present a reasonable estimate of the contractor-installed cost of each suggested measure. We considered requiring, in addition, the presentation of do-it-yourself installation costs for several measures, but decided to leave this choice to the State or utilities and fuel suppliers. Subparagraph (ii) requires the auditor to present a reasonable estimate of the savings for each suggested measure. We considered specifying the time-period for such estimates (such as "first-year savings estimate"). Our model audit will contain this time-period. We also considered requiring presentation of

simple-payback periods or other similar measures of cost-effectiveness. However, because the value of this information is unclear and open to substantial disagreement, we have left the choice of adding such information to the State or utilities and fuel suppliers. We invite comment on this decision.

Subparagraph (iii) requires a certain disclosure, or its equivalent, concerning the validity of the estimates which the customer receives. DOE believes that such a disclosure is vital to make the customer aware that the estimates are not a guarantee of savings, but that they are reasonably valid given the state of the technology of estimation. We invite comment on the particular wording we have chosen, and on the question of whether we should eliminate the words "or its equivalent" from this subparagraph.

Subparagraph (c)(1)(iv) and paragraph (a)(1) require that an audit include an assessment of which of the energy conserving practices (as defined in the rules) are applicable in the customer's home. We believe that these low-cost or no-cost steps are often the most effective actions a person can take to save energy, and that it is important for the auditor to emphasize this fact.

Subparagraph (v) establishes several additional results which must be presented with respect to renewable resource measures. In general, these additional requirements are necessary because of the substantial variation among the actual products which a customer may eventually purchase. That is, two products which are both called "solar domestic water heating systems" may have very different costs and characteristics from each other and from the model system which the auditor uses. Subparagraph (v) also contains and additional disclosure about this variation which must be given to the customer for any renewable resource audit. We seek comment on whether these additional requirements are necessary and also on whether they provide sufficient information to the customer.

Paragraph (c)(2) requires the State to prohibit utilities and fuel suppliers from providing cost estimates for self-installation of furnace efficiency modifications and load management devices, because of the safety problems of improper installation. These measures should only be installed by persons meeting certain minimum qualifications.

Subsection 456.307(d) contains our proposals for the minimum standards for the calculation procedures for the cost and savings estimates to be provided by the auditors. These estimates must be based on local data for fuel and materials, and on measurements

which the auditor makes of the house, rather than on measurements which the customer makes. Some evidence must be given to the customer of the fact that the savings from a combination of suggested measures is likely to be less than the sum of the savings of each measure installed individually.

We considered several alternatives to the provisions contained in the Proposed Rule. At one extreme, we considered establishing a single national auditing procedure which would prescribe the measurements which the auditor must make, the formulas which must be used, and the content of the results. As mentioned above, DOE is developing such a procedure as part of its assistance to States, utilities, and fuel suppliers. We also considered prescribing only the measurements which the auditor must make on-site in making estimates, such as area of the house, amount of ventilation, temperature settings by the occupants, etc. Finally, we considered eliminating any prescription about audit procedures. The Proposed Rule sets a performance standard for audit quality to be met by auditors, and allows States and/or auditors a great deal of flexibility in choosing particular auditing procedures. We are particularly concerned about whether this degree of flexibility is appropriate with respect to renewable resource audits, since so few people have experience with such audits. We seek comment on the alternatives we considered.

Paragraph (d)(2) requires that any audit of a home with an oil furnace include a test of the steady-state efficiency of that furnace. This provision is discussed above in "E. Suggested Measures and Categories of Buildings" under the heading "Replacement Oil Burners."

We recognize that variation is inevitable when two different people perform audits, but paragraph (d)(3) sets a minimum standard of consistency for audit results. Subparagraph (d)(3)(i) requires that if an eligible customer receives audits from two or more covered utilities or participating fuel suppliers, these audits must be based to some extent on the same basic assumptions about fuel prices, prices for suggested measures and climate. Subparagraph (3)(ii) requires the State to establish procedures to assure consistency for all auditing procedures used in the State for making measurements and calculations. We considered requiring that the State establish a single auditing procedure for use by all covered utilities and participating home heating suppliers. We seek comment on whether paragraph (d)(3) establishes an appropriate level of consistency.

One potential source of variation between audits is the type of each measure assumed in the calculations. Selection of type will affect both the cost estimates and the savings estimates provided by the auditor. We have not prescribed the types which must be assumed, but recognize their selection to be a source of variation and possible abuse. In particular, the auditor may be given discretion to choose passive solar devices, which will substantially affect the cost and savings estimates, and the attractiveness of this measure to the customer. We seek comment on the need for our rules to address the selection of types of suggested measures.

Subsection (e) requires auditors to provide certain other information to customers about the other services offered under the State Plan. We considered but rejected requiring the auditor to inform the customer of the benefits of other programs as well, including Federal and State tax credits, and also to provide the customer with information on the self-installation of certain measures. We invite comment on whether such information should be part of the rules.

Paragraph (f)(1) prohibits the auditor from providing any information to the customer about products other than suggested measures, unless the customer specifically requests such information. This provision is similar to that in the Program Announcement section, since we again do not want products other than suggested measures to appear to have any endorsement by the DOE or the State unless they have been evaluated. Though we considered an outright ban on additional information, we believe that many customers will ask questions about products they have heard described as energy-saving. We do not wish to discourage auditors from being familiar with the characteristics of these products. We wish to prevent auditors from promoting products which may be less effective than the suggested measures, under the guise of the national conservation program.

Paragraph (f)(2) prohibits the auditor from recommending any supplier, contractor, or lender if such recommendation would unfairly discriminate among such firms. This paragraph provides, however, that if a utility or fuel supplier sells, installs, or finances suggested measures, the auditor may state this fact to the customer. This paragraph is a compromise between the competing goals of, first, establishing an effective information and promotion program and, second, preserving and possibly promoting competition in the sale of suggested measures. Paragraph (f)(3) is closely related, in that it requires the auditor to disclose any conflict of interest he or she may

have before the audit is performed, in order to make the customer aware of any potential bias in the results.

We considered two major alternatives to this approach. The first is to prohibit the auditor from having any interest in the sale of any suggested measure. This would require utilities and fuel suppliers to hire their own auditors or to hire firms which offered only auditing service. (It would also reduce the motivation of the auditor to encourage the customer to purchase suggested measures.) One reason we rejected this alternative is that we do not believe that a substantial number of firms exists which perform audits but do not sell measures. The second alternative is to allow auditors to have an interest in the sale of measures, and allow them to recommend themselves to do the work. This alternative might be the most effective in selling measures to customers, but it would also be highly anticompetitive, since the auditor chosen by the utility or fuel supplier would have a tremendous and unfair advantage over his or her competitors. We seek comment on these alternatives, and on our compromise provision.

Subsection (g) carries out the requirement of NECPA (section 215 (b)(2)(B)) that no utility or home heating supplier inspect any furnace for which it does not provide fuel unless the customer requests such inspection in writing. The Conference Report on the legislation charges the FTC with close monitoring of this provision of the Act.

Subsection (i) requires the States to require that auditors be qualified according to the procedures which are contained in § 456.314 below. DOE believes that the abilities of the auditors are crucial to the success of this program. We have established broad areas of competence in which the auditor must be qualified by the State. In our technical assistance program for States, we propose to develop a recommended curriculum for the training or certification of auditors. We considered establishing such a curriculum as a part of the rules, but this would limit State flexibility substantially. We invite comment on this alternative.

H. ARRANGING INSTALLATION

Section 215(a) of NECPA requires utilities to include procedures for informing eligible customers of "the availability of arrangements described in Subsection (b)." Subsection (b) requires utilities to "arrange to have the suggested measures installed * * *." No further description of this arranging service is provided.

Section 456.308 of the Proposed Rule contains the requirement to arrange installation of suggested measures.

In an effort to encourage flexibility in developing State Plans, this Section provides States the opportunity to develop and describe an arrangement service of their own choosing. Subsection (b) requires, however, that the arrangement service must entail more than the distribution of a list of suppliers and contractors. We have included this requirement for two reasons: First, we do not believe that the mere distribution of lists is a service that will encourage many customers to purchase suggested measures; and second, NECPA clearly addresses "arranging installation" and "distributing lists" separately, to ensure that they are not the same service. The arrangement service is essential to the success of the program for several reasons:

(1) The arranging service provides the minimum eligibility for certain program benefits, as required in § 456.305. Eligible customers participating in the arrangement could be guaranteed the following services:

- Measures installed in compliance with the installation standards

- Materials which contain a 3-year warranty and which meet DOE standards

- Quality control in the form of random inspections (or with respect to certain measures, mandatory post-inspections)

- Assistance in resolving a complaint against a contractor

- Opportunity to pay for the installation on the utility bill

Without a clear definition of the arranging service, it is difficult to determine who shall receive these services and to insure that they receive them.

(2) The arranging service provides a means for complying with the reporting requirements. It is an accurate and effective means to determine how many installations and what types of installations occurred "under the program."

(3) The arranging service provides a means to evaluate the performance of listed contractors. Without a well-defined arranging service, it is difficult to determine which contractors are installing measures "under the program" and, therefore, complying with the installation standards.

We recognize that defining an arrangement service which is both useful and not anticompetitive is a difficult task. NECPA contains several constraints on utility efforts to arrange installation of measures. We considered several alternative prescriptions for the arrangement service, but have decided to leave the selection to the State. We seek comment on alternative arrangement services which State Plans could require.

One concept of the arranging service which we considered is the following:

The covered utility would provide all recipients of the energy audit, as well as all eligible customers who request it, with the State-developed list of contractors. The list contains the name, address, and measures installed by each contractor, but contains no telephone numbers except that of the utility or fuel supplier. The customer who wishes to receive bids for installation of measures would then call the utility or fuel supplier, thereby triggering the arranging service. The eligible customer may then select the names of contractors off the list from whom he would like to receive bids, or may then request the utility or fuel supplier to select randomly the names of contractors. In both cases, the utility or fuel supplier would arrange initial contact between contractors and customers.

Whenever a contractor is contacted by the utility or fuel supplier, he or she is required to submit copies of bids and contracts which he or she provided to the customer. The utility or fuel supplier will file these for use in meeting recordkeeping requirements, conducting random inspections, and meeting other program obligations. The service provided to the customer would principally be the assurance of quality control and access to grievance procedures.

Earlier versions of the legislation allowed all utilities to install suggested measures. Utility activities related to installation have been, for the most part, reduced in NECPA to include only arranging (see Subpart E of the Proposed Rule). Congress was concerned that utilities might, through the operation of the RCS Program, adversely affect competition in the installation of conservation measures. We are similarly concerned about installation by home heating suppliers. This could also occur if utilities and fuel suppliers favor specific contractors on a non-competitive basis, or if States develop relatively subjective listing criteria. Such Criteria might include a specific number of years in business or include only companies of a specific size (see below: "L. Lists").

Restricting participation in the RCS Program by such criteria would be unacceptable. It is to protect against such an approach that § 456.308(d) of the Proposed Rule requires States to prohibit in the State Plans utilities and fuel suppliers from unfairly discriminating among contractors in recommending, selecting, or providing information about their services.

Comments are specifically invited on two questions raised by this section on the Proposed Rule. First, what approaches to the arranging function should we approve as part of State Plans? Second, does the Proposed Rule provide adequate safeguards for competition? With respect to both questions, we solicit comments on whether utilities and fuel suppliers could "arrange" installation by having a limited number of contractors on call, such contractors having been selected in a competitive and fair manner. In this regard, what form of

selection would be competitive and not unfairly discriminatory. We note that several successful existing utility programs arrange installation through a limited number of contractors.

I. ARRANGING FINANCING

Section 215(a) of NECPA requires utilities to include procedures for informing eligible customers of "the availability of arrangements described in Subsection (b)." Subsection (b) requires utilities to "arrange to finance the purchase and installation costs of suggested measures."

Section 456.309 contains the requirement to arrange financing of suggested measures. We have provided the State maximum flexibility in developing an arrangement service which best suits the needs of the people within that State. As with the arrangement service for installation, DOE feels that well-defined finance arranging is important to the success of the over-all program. Section 456.309(b) also requires that "arranging financing" entail more than the distribution of lists of lenders.

As with arrangements for installation, we recognize that defining an arrangement service for financing is difficult. We considered several alternatives, and seek comment on which arrangement services should be acceptable.

Two examples are:

The utility or fuel supplier could distribute the State-developed list of banks and lending institutions and provide loan application forms to customers from institutions selected by the customer. In addition, the State may consider requiring utilities and fuel suppliers to provide annual percentage rates of the lending institutions on the list to customers who request it.

Or, the State may want to consider an arranging service in which the utility or fuel supplier would provide a standard credit form which, when filled out by the customer, is distributed to lending institutions selected by the customer or randomly selected by the utility or fuel supplier. The customer could then select the one which offers the best terms. Handling fees, if required, could be expensed or charged directly to the customer as determined by the covered utility, the State Regulatory Authority, or the fuel supplier.

We do not believe it was the intent of Congress to subject utilities or fuel suppliers to provisions in the Truth in Lending Act (15 U.S.C. 1601, *et seq.*) if they are not already subject. Neither do we believe that Congress intended to establish a Federal requirement that utilities and fuel suppliers be a lender of last resort. Utilities and fuel suppliers should not be expected to accept a financial risk greater than that accepted by other lending institutions, unless the State Plan so provides.

When describing the arrangement service the State may wish to consider the following questions:

- Must the utility or fuel supplier provide billing services if an eligible customer does not participate in the arranging service?

- If the customer selects a lender other than one arranged through the utility or fuel supplier, is he or she still considered "under the program" and therefore, eligible to receive program benefits? (See Section 456.305(c) of the Proposed Rule).

The same interest in promoting fair competition among contractors also applies to lending institutions.

We seek comments regarding approaches for arranging financing which we could either include in the Proposed Rule or approve as part of a State Plan.

J. ACCOUNTING AND PAYMENT OF COSTS

Section 215(c) of NECPA requires each utility RCS Program to include procedures to assure that all amounts expended or received by a utility which are attributable to the RCS Program (including any penalties paid by such utility under Section 219(d)) are accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility. Section 456.310 of these rules requires utilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and rural electric cooperatives to utilize certain prescribed accounts established by FERC and Rural Electrification Administration (REA). Nonregulated utilities are required to use accounts within their accounting system with similar attributes.

Subsection (a) requires regulated utilities and rural electric cooperatives to use "Customer Assistance Expenses," for amounts expended and Account 456, "Other Electric Revenue" (for electric utilities) and Account 495, "Other Gas Revenue" (for gas utilities) for billed income. Other nonregulated utilities are required to use equivalent accounts. The requirement to use the specified accounts and procedures is to assure uniform accounting treatment of activities under the program. Uniform accounting treatment is required in order for State agencies and the DOE to analyze accurately RCS Program costs and the allocation of these costs to ratepayers.

The specified accounts are based on the existing FERC and REA Uniform System of Accounts and may be changed as FERC and REA revise their uniform system of accounts by rulemaking.

Subsection (b) prescribes the three allowable methods of payment for program costs. All costs incurred must either be charged to the eligible cus-

tomers for whom an activity is performed or be treated as a current expense of providing utility service and charged to all ratepayers of the utility in the same manner as current operating expenses of providing such utility service, unless the cost is incurred by the utility to perform services for the State under the program, in which case the State may reimburse the utility for those costs. The costs associated with the Program Announcement and all public education and program promotion related to the RCS Program are required to be treated as a current expense of providing utility service. The costs of labor and materials incurred by a utility for the purchase and installation of any energy conservation measure are required to be charged to the residential customer for whom the activity was performed. The treatment of the costs of general administration, and of the project manager requirements (including energy audits, lists, and arrangements for installation and financing) shall be decided by the State Regulatory Authority for regulated utilities and by each nonregulated utility for itself in accordance with one of the two generally prescribed methods of payment. Other costs, including interest on a loan made by a utility, are to be charged to the eligible customer for whom the activity is performed unless the appropriate regulatory authority finds, after public notice and opportunity for public hearing, that treatment of the cost as an operating expense will result in lower rates to ratepayers by reason of reduced demand for energy than would have occurred had the cost not been treated as an operating expense.

It is expected that energy audits will be the most costly program service the payment of which is left to the discretion of the Regulatory Authority or nonregulated utility. Subsection 310(c) makes it clear that Regulatory Authorities or nonregulated utilities may establish a policy of allowing only one free or subsidized audit to each residential customer. This policy might reduce program costs in those areas served by more than one covered utility.

K. BILLING, REPAYMENT, AND TERMINATION OF SERVICE

Section 215(f) of NECPA addresses the requirements pertaining to loans made by utilities, fuel suppliers or other persons under the RCS Program. These requirements have been incorporated in §456.311(b) of this Proposed Rule. This subsection provides for the repayment of loans made directly by a utility or fuel supplier to a customer under the Program as a part of a periodic utility or fuel bill, at the option of the customer. It also pro-

vides for customer repayment of the principal and interest of the loan amount over a period of not less than three years, unless the customer chooses a shorter repayment period. Subsection (b) also provides for the repayment through the utility or fuel bill of loans made by other lenders under the program, providing that such an arrangement is acceptable to such lender. Section 456.311(a) requires that any costs of carrying out any activity under the program which is directly charged to the customer for whom the activity is performed be stated separately on the bill from the utility or fuel service charges. This provision is required by Section 215(c)(2)(B) of NECPA.

Section 215(e) of NECPA prohibits covered utilities from terminating utility service due to a customer's default with respect to any payment due for measures installed under the program. Section 456.311(c) of the Proposed Rule expands this provision to prohibit restriction of service due to default, since this seems consistent with the intent of the legislation.

In line with the intent of Section 215(e) of NECPA, §456.311(a)(2) requires that, when costs associated with the program are included in a customer's periodic utility or fuel bill, payments be credited first to the utility or fuel service costs with any excess credited to other costs, unless the customer requests an alternative distribution of payments. This prevents a utility or fuel supplier from crediting a partial payment first to an outstanding loan appearing on the bill, and restricting or terminating a customer's utility or fuel service due to his failure to pay utility or fuel service costs.

With respect to loans made either by a utility, fuel supplier, or by another lender to a customer under the program and appearing on a periodic utility or fuel bill, Section 215(f)(2) of NECPA makes clear that a lender may require lump-sum payment of outstanding loan due in the event of a default in payment by the customer. The same subparagraph also requires that no penalty be imposed by the lender in the event of prepayment of a loan by a customer. These provisions are included in §456.311(b)(4) of this Proposed Rule.

The Fair Credit Billing Act (FCBA), and the regulations issued pursuant to the FCBA—known as Regulation Z, establish a mandatory dispute resolution procedure for alleged billing errors appearing on periodic statements sent to customers in connection with "open end" customer credit accounts. In enacting the FCBA, Congress recognized that there will inevitably be instances of billing errors when periodic billing statements are sent in large volume and therefore established mechanisms

for facilitating dispute settlement. While many credit transactions under this program are likely to be closed end in nature, the Proposed Rule will permit periodic billing through the utility or fuel supplier, but because it is closed end, such billing is not covered by the provisions of the FCBA. Periodic billing by the utility and fuel supplier is no less subject to billing errors than the open end transactions presently covered. Therefore, subsection (b)(3) imposes requirements which parallel those of Regulation Z on bills sent by the utility and fuel supplier for loans or purchases of suggested measures. We seek comment on this requirement and on whether a disclosure of these procedural guarantees ought to be included on each bill sent to a customer for repayment of a loan.

L. LISTS

NECPA contains three major provisions with respect to lists of suppliers, contractors, and lenders:

(1) DOE must promulgate standards for procedures to assure that firms are included on the lists in a fair, open, and nondiscriminatory manner. The rules must include procedures for delisting such firms in appropriate circumstances as well as procedures for redress of any complaints they may have about the lists.

(2) State Plans must contain adequate procedures to allow such firms to be included on such lists.

(3) Each utility or home heating supplier program must include procedures to provide these lists to each eligible customer.

The Conference Report on NECPA expands on these requirements:

"In connection with the applicable procedures in the State Plan, the Governor shall identify in the plan, the person or agency responsible for developing lists of approved suppliers, lenders, and installers, and for implementing delisting procedures. The person or agency so designated shall not be a regulated utility."

Because of the division of responsibility for developing and distributing the lists, we have created the term "Master Record" to describe the files of qualified firms kept by the listing agency designated by the State as distinguished from the lists which must be distributed by the utilities and fuel suppliers. Subsection (a) requires the State Plan to provide for the development of the Master Record, and establishes the procedures for its development. Paragraphs (a) (2) through (4) require the listing agency to include all qualified firms, and only such firms, in the Master Record.

Paragraph (6) requires the State Plan to contain procedures for removing firms from the Master Record, and to provide certain minimum procedures

al guarantees for complaints if a firm believes it has been unfairly treated. The specific criteria for removing contractors, suppliers, and lenders from the lists are left to the State. DOE considered prescribing the criteria for removal of firms, such as requiring removal after repeated violations of installation standards, or after a specified number of violations. Though the Proposed Rule allows States to establish these criteria, we believe that firms should be delisted for repeated violations of the listing requirements, even if they correct these violations. We request comment on these alternatives.

Paragraph (6) is meant to assure that utilities and home heating suppliers are notified monthly of any additions or deletions to the Master Record. Along with the requirement of Paragraph (c)(5) that utilities and fuel suppliers use this information in providing arrangement services, this provision assures consumers some protection against contractors who have been delisted. This provision does not, however, require that the distributed lists be changed every month. We seek comment on alternatives to the one-month notification period.

Subsection (b) contains the criteria which each of the three groups of listed firms must agree to meet in order to be included on the lists. In general each of these criteria is meant to assure consumers that listed firms will meet certain minimum standards of performance for work or services performed. However, we wish to avoid creating so many requirements that few firms seek to be listed, or that their prices for services performed under the program become too high. We seek comment on the balance we have proposed in this subsection between these conflicting goals.

The State must determine under what circumstance jobs and services performed by listed firms must meet the specified criteria and which need not. For example, Subparagraph (b)(1)(i) requires installation contractors to agree to meet the material and installation standards in every job performed under the program. At a minimum (as required by section 305) this must include all installations arranged by the utility or home heating supplier. But a State could require that all listed contractors meet the material and installation standards for every job which they perform for a customer who is sent the lists by a covered utility or participating home heating supplier. We considered prescribing an even broader application of the standards: requiring that all contractors and suppliers who wish to be included on the lists agree to meet the standards in every job they perform, whether "under the program" or not. How-

ever, if the program is successful and encompasses virtually all sales of suggested measures in a particular area, this approach to listing would eliminate products from the market which did not meet our standards. To the extent that our standards assure a level of quality above that preferred by many customers, this would unduly reduce consumer choice and competition. In addition, the Conference Report makes it clear that the Congress did not intend for this program to be the vehicle for establishment or enforcement of national standards for various conservation products. At present, only the Consumer Product Safety Commission (CPSC) has any such national authority regarding energy conservation measures. CPSC has specific authority regarding the safety of cellulosic insulation.

Subparagraphs (iii) to (vi) set additional requirements for installers. These requirements are designed to protect consumers. Subparagraph (vii) requires that a copy of the contract for any installation performed under the program be sent to the utility or home heating supplier. These contracts will serve as a record to use in evaluating the program, and will serve as the pool from which random inspections will be performed. Subparagraph (vii) has a serious drawback when a covered utility or participating home heating supplier both installs and arranges installation of suggested measures. Since this provision requires that the utility or home heating supplier receive copies of the contracts performed by their competitors, including price and other job specifications, these utilities or suppliers would then have a substantial competitive advantage. We are considering additions to our rules to eliminate this problem, and seek comment on it.

Paragraph (b)(2) establishes the minimum criteria for inclusion of suppliers. Again, we have decided not to prohibit suppliers on the lists from selling non-standard products. Instead, we have decided that they must offer products which meet the standards, but may sell others as well. However, the suppliers on the list must display prominently in their stores a statement of which products meet the DOE standards. We have not included any further requirements for suppliers, because of the difficulty of determining when a customer purchases a measure from a supplier "under the program." We seek comment on whether these listing criteria are reasonable or need to be more or less stringent.

Because of the potential safety hazards associated with installation of vent dampers and electronic ignition devices, we considered requiring that all listed suppliers agree not to sell such products for installation by an

untrained person. We have included no such requirement, but seek comment on it.

Paragraph (b)(3) establishes the minimum criteria for lenders who wish to be listed. Each criteria is designed to provide certain procedural protections or disclosures to consumers who seek or obtain loans under the program. As with installation of measures, the State has substantial flexibility in deciding which loans must be covered by these criteria and which do not. At a minimum, a lender must meet these criteria for any loan arranged by a covered utility or participating home heating supplier.

With respect to Subparagraph (3)(ii), DOE considered prohibiting lenders from requiring or taking a security interest in a home for any loan under the program of less than \$2000. We decided that this might unnecessarily restrict access to loans by some customers, and instead we propose a disclosure. We seek comment on the alternative approach.

Paragraph (b)(4) allows the State to use additional criteria for suppliers, contractors, and lenders only if the Secretary determines that such criteria are fair and nondiscriminatory. We considered allowing or requiring certain qualifications such as bonding or licensing to be criteria. In general, we found that such qualifications are not necessarily a good indication of the quality of work which a firm performs. We seek comments on what additional qualifications should be allowed in State Plans or required in our rule, and what effect such qualifications would have on competition or on new or small firms.

Subsection (c) establishes the actual printed content of the lists and the procedures for printing and distributing the lists. NECPA states that the covered utility or participating home heating supplier must "provide" the lists to every eligible customer. The Conference Report clarifies that the intent of this provision is not that the covered utility or participating home heating supplier mail the lists to every customer, but the lists should be provided to customers in a timely and convenient manner. This subsection requires that the lists be provided to every customer who requests them. Section 456.307 also requires that the lists be given to every person who has an audit performed.

Paragraph (c)(1) requires certain basic information about each firm to be included on the lists. Paragraph (2) requires certain disclosures to appear on the lists. We believe that there is substantial potential for consumers to be misled about the meaning of the lists unless these disclosures are prominently displayed. This will also repeat and emphasize information pro-

vided in the Program Announcement and by the auditor explaining under what circumstances the various standards and criteria apply. We considered but rejected including in the Proposed Rule a requirement that the lists of lenders include advice to customers about how to shop for credit. We seek comment on whether such advice ought to be required.

Paragraph (c)(4) requires that the Secretary approve any additional requirements or allowances of the State Plan with respect to information on the lists. We considered numerous additional types of information which could be included on these lists and rejected each of them. Examples of such rejected information are: (1) Prices or interest rates which a supplier or lender charges for products or loans; (2) the number of years a particular firm has been in business; and (3) the level of bonding or insurance carried by the firm. This information was believed to be anticompetitive in nature, or irrelevant to the quality of work which a firm might perform. We also considered the approach of requiring, or at least allowing, lists of lenders to include a standard measure of interest rates, such as Annual Percentage Rates (APRs). Consumers are generally not used to comparative shopping for loans, and including APR's on the lists could help. However, we decided to prohibit them in our Proposed Rule, unless specifically approved by the Secretary. We seek comments on these prohibitions and on any alternatives which would allow States more flexibility in preparing lists.

Paragraph (c)(6) requires State Plans to provide that the lists are reprinted every six months to assure that the lists which customers receive are no less current than six months. This paragraph is separate from the requirements of Paragraphs (c)(5) and (a)(6) which together require that any lists which a utility or home heating supplier uses in providing the arrangement services be no less current than one month. We seek comment on the effect of these updating requirements.

M. POST-INSTALLATION INSPECTION

Section 212 of NECPA directs the Secretary to promulgate standards which he determines necessary for the installation of any suggested measures as well as establish other requirements which he determines to be necessary to carry out this Part. DOE has proposed the following procedures to ensure that the standards promulgated under this Part for the safe and effective installation of measures are fully implemented.

Mandatory Inspections of all Vent Dampers, Electric Ignition Systems, and Wind Energy Systems. DOE has determined that the quality of the in-

stallation of these measures is critical to the safety of the occupants of buildings so equipped. DOE, therefore, requires each installation of these measures to be inspected within one week of installation. DOE determined that a one-week period was sufficient for the logistics involved in the arrangement of inspections while at the same time minimizing the potential hazards which could occur from improper installations. We considered requiring the inspections of vent dampers and ignition devices any time prior to the beginning of the heating season, but rejected this approach since it allowed too great an opportunity for hazardous situations.

DOE has also established criteria to assure that each inspection is carried out effectively and objectively by requiring that the person conducting the inspection:

- Meet the criteria for inspectors of each specific measure as detailed in § 456.314; and

- Have no financial interest in the contractor who installed the measure.

An exception to the second criteria is made for persons inspecting installations conducted by covered utilities or participating home heating suppliers. This exception was made because we believe that utilities and suppliers are permanent members of a community whose interest in safe installation may be relied upon.

DOE requires inspectors to test the compliance of installations with the applicable installation standards promulgated under this part. Inspection results are required to be reported to the customer and installer as soon as possible to ensure that any corrective actions which are required are executed without delay. The inspector is also required to report the results of the inspection to the Listing Agency within a reasonable period of time to form a record for any possible delisting procedures.

Random Inspections. DOE has determined that the qualifying procedures for installers of suggested measures alone are insufficient to guarantee that installations are properly carried out under this program. Therefore, DOE has proposed the following schedule of random inspections of installations:

- Forty percent of the first ten insulation installations under the program by each insulation contractor; and

- Twenty percent of the installations of each suggested measure done under the program, excluding those measures covered under the mandatory inspection requirements but including installations of insulation materials.

DOE has required specific inspections of insulation installations because improper installations are not

easily detected by the homeowner. Improper installations could result in both short-term and long-term problems relating to fire or structural damage, as well as reduced effectiveness of the insulation material. Therefore, DOE requires that a random sample of each contractor's work be evaluated to ensure that no contractor is installing materials in a manner which may lead to the creation of hazards in the future. This inspection will also ensure that measures are installed effectively. DOE does not envision its inspection program of insulation installations as a punitive measure, but rather as a tool for teaching installers the proper method for the safe and effective application of insulation materials.

We also considered two other alternative levels of random inspections: (1) One hundred percent of all installations for at least the first year of the program; and (2) no specified inspection requirements. This latter alternative was unacceptable to us because several utilities and the TVA have found a large number of faulty installations by contractors under their existing programs. However, 100 percent inspections seemed unnecessary to ensure compliance with the installation standards, as long as the inspections are performed in a truly random fashion. We seek comment on our decisions in this area.

Paragraph (b)(3) requires that the random inspections determine compliance with the installation standards for energy conservation and renewable resource measures, but not with material standards. We believe that in most cases the only way an inspector could verify compliance with the material standards for any measure is by removing a sample of the product or material from the house and sending it to a laboratory for testing. This is particularly true for insulation, and less so for other measures. Such a testing procedure would be very expensive. However, without it, our proposed rules contain no provisions to ensure compliance with the material standards, except the certification by the contractor or supplier that the standards are met. We considered requiring third-party certification of compliance of products with the material standards. Such a certification requirement might be very costly to manufacturers. It would be more appropriate for a nationally-enforced standard than for our standards, which apply only to our program. We seek comment on how compliance with these standards under this program might be enforced, and the need for an enforcement mechanism for material standards.

DOE has determined that, initially, a random inspection program of all measures installed is necessary to

ensure that installers perform in accordance with the installation standards of the program. DOE has given each State the option to reduce this requirement after a period of time provided that the State can demonstrate to the Secretary that the twenty percent random inspection is unnecessary to ensure safe and effective installation of suggested measures under the program. We considered removing this aspect of State flexibility. We seek comment on whether random inspections should be required for the duration of the program.

Paragraph (b)(2) contains criteria for inspectors performing the random inspections, who must:

- Meet the applicable criteria of Section 456.314, and

- Have no financial interest in the contractor who installed the measures.

Where the contractor is the covered utility or participating home heating supplier, the State is required to provide an inspector who has no financial interest in such contractor.

The inspectors must determine that the installation being inspected complies with the applicable Installation Standards of the program and must report the results of the inspection within a reasonable period of time to the customer, the installer, and the Listing Agency to assure that, where necessary, corrective actions are taken.

We also require the State Plan to identify the person or agency responsible for administering the procedures for post-installation inspections and permit the Listing Agency to carry out this function.

We also considered requiring that utilities and fuel suppliers offer a post-installation inspection of suggested measures to any customer who requests one. Though there is no specific requirement for such a service in NECPA, we believe that many customers would be willing to pay for such inspections to ensure that they have received a proper installation. This service could also be considered part of the arranging service for those customers. We seek comment on whether we should require such a service to be included in each State Plan.

N. QUALIFICATION PROCEDURES

We have concluded that to a large extent, the success of the RCS Program depends on the interaction between the eligible customer and the auditor. We have, therefore, established minimum areas of qualification necessary for an auditor to perform his or her function effectively.

The potential safety hazards which may result from the improper installation of three devices is serious enough to warrant special consideration. These devices are vent dampers, electronic ignition devices, and wind

energy systems. Accordingly, Section 313(a) requires that each installation of such measures be inspected. Sections 314 (c), (d), (e), and (f) require the persons doing both the initial installation and the post-installation inspection be specially qualified to perform their functions. DOE is currently developing the standards necessary for the installers and inspectors of each of these measures.

We have also concluded that the persons carrying out random inspections must, at a minimum, be qualified on the elements of the installation standards proposed herein and be able to judge conformance with the applicable standard. Subsection (g) contains the minimum qualification elements for these quality examiners.

Subsection (h) addresses the method for qualifying individuals to perform the above functions. This method has not been dictated by DOE but rather has been left largely to the discretion of the States. While the Proposed Rule provides alternatives, such as training, testing, or a combination thereof, which may be used to qualify individuals, the Proposed Rule also allows States to use any other method of qualifying the individual which assures that the individual is qualified to perform his function. Any such method must be included in the State Plan and will be subject to DOE review for sufficiency. Subsection (i) requires the State Plan to describe the procedures for qualifying each of the groups of individuals as well as give assurance that all persons are given a reasonable opportunity to participate in these procedures. DOE has established the date of first implementation as no later than 90 days following approval of the State Plan, to assure that qualified individuals are available when the RCS Programs are initiated.

O. CONCILIATION AND REDRESS

Section 213 (a)(5) of NECPA requires that mechanisms be provided for resolving complaints by customers against persons who sell or install suggested measures under the RCS Program. Section 213(c) of NECPA requires that a mechanism also be provided in every State Plan to assure that any person alleging injury under any provision of the State Plan is entitled to redress. Section 213(b)(2) (F) of NECPA requires that contractors, suppliers, or lenders who allege violation of the State standards regarding fair preparation of the lists be afforded redress under the State Plan.

To meet these requirements, DOE has in the Proposed Rule created a three-tier process: A conciliation conference for customers; an informal redress procedure which results in decisions enforceable under State law and which is available to all involved in

the program; and the availability of State courts for recovery of damages resulting from activities under a State Plan.

The requirements for the customer complaint resolution procedure (called "conciliation conference" in the Proposed Rule) are described in § 456.315(a) of the Proposed Rule. These requirements are intended to insure that the process is informal, simple, and accessible to customers, to reflect the Congressional directive in the legislative history that the State procedure for resolving customer complaints be fair and expeditious without necessarily requiring formal hearing procedures.

The procedure proposed in the rules would encourage conciliation rather than result in a decision. The rules call for the conciliation conference to be at a place convenient to the customer, to be presided over by an impartial conciliator without a financial interest in the party or the outcome, and for participation in the process to be free of cost to the eligible customer. These requirements are believed to be important for the encouragement of consumer participation in this procedure.

In order for the conciliation conference to be meaningful, two additional issues are addressed in other sections of the rule. Section 456.312(b) of the rule requires that contractors, suppliers, and lenders agree, as a condition for being included on the lists, to participate in this procedure in good faith. In addition, §§ 456.306(a) and 307(e) require that information regarding the availability of this procedure be included in the Program Announcement and that its existence and method of access be disclosed at the time of the audit.

If a customer is dissatisfied with the informal conciliation process, the customer may bring a complaint under the redress procedure contained in § 456.315(b). This procedure is also available to any person alleging injury arising under the program. It is intended that this section also cover contractors, suppliers, and lenders who allege injury related to the preparation of or removal from the lists.

The Conference Report clearly states that existing State procedures may be adequate to meet the requirements for redress under this program. Therefore, subsection (b) is drafted so as to set minimum requirements for a State procedure which allow appropriate existing mechanisms to be utilized. For example, it is intended that a State which has an existing arbitration procedure or small claims court system, which fulfills the minimum requirements of this section, could choose to use such system to meet its obligation to provide for redress. We

seek comment on whether subsection (b) would exclude the use of existing State systems which might be adequate.

Subsection (b) provides that the redress procedure meet five minimum criteria: It must be accessible, fair, low-cost, informal, and expeditious. The proceeding must result in a written decision by the deciding official which includes a short statement of the reasons for the decision. This decision must be made available to the State or State agency responsible for monitoring the lists as an additional mechanism for monitoring compliance by contractors, suppliers, and lenders with their obligations under the program. Subparagraph (b)(1)(iv) requires that the cost of the redress procedure be kept at minimum. We believe that States might allow this cost to be different for different classes of persons, such as contractors, consumers, or utilities.

Subsection (c) requires that a right of action in State courts must be available for recovery of damages resulting from activities under the State plan. Where small claims courts satisfy the requirements of Subsection (b), there would be no separate requirement for Subsection (c). It should be noted that to provide such a right of action may require State legislative action. For instance, it is intended that where failure to install materials according to DOE's standards proximately causes injury, those standards would set the legal requirements with respect to negligence and not "generally accepted" installation standards.

P. COORDINATION

Section 213(a)(6) of NECPA requires a State Plan to assure coordination of the RCS Program with other State and Federal energy conservation programs. Section 456.316(a) of the Proposed Rule repeats this requirement. Several of the existing Federal and State conservation programs are very similar to the RCS Program. We strongly encourage States to consider methods of coordinating their programs to enhance each of them. For example, utilities could cooperate with local agencies implementing the DOE Low-Income Weatherization Grant Program by distributing information to their customers about eligibility for Weatherization Grants.

Many States may consider methods of cooperation between utilities and home heating suppliers in implementing RCS Programs. For example § 456.307(d) requires certain similarities in the auditing procedures performed by utilities and oil dealers with overlapping service territories. The State Plan may specifically require or allow sharing of information to ensure similarity. Whenever such coordina-

tion is permitted, § 456.316(b) requires the State Plan to assure that no collusion on prices or interest rates will occur.

Subsection (c) requires that, if the Lead Agency is not the State Regulatory Authority, then the State Plan must describe how implementation of the State Plan will be coordinated between these two State agencies. We consider such coordination essential to ensure adequate implementation of State Plan.

Q. HOME HEATING SUPPLIERS

NECPA provides for the inclusion of a home heating supplier program in the State Plan at the discretion of the Governor and for voluntary participation in this program by individual suppliers. DOE believes that broad participation of home heating suppliers is essential to the success of the program and encourages their participation. In addition, the Congress has expressed concern about the potential anti-competitive effects of allowing or encouraging gas and electric utilities to inspect oil furnaces. NECPA therefore includes procedures to reduce these effects.

DOE believes that home heating customers must be offered the same services as all other heating customers. Though NECPA distinguishes between the requirements for utility programs and those for home heating suppliers programs (see Sections 215 and 217 of NECPA), we have decided to make customer service requirements in the Proposed Rule identical for both types of fuel suppliers. NECPA also provides flexibility to the Governor to reduce certain of the requirements for home heating suppliers because of their limited resources as compared to utilities. We expect Governors to use this flexibility to increase the rate of participation of home heating suppliers, without significantly reducing the level of services and benefits available to eligible customers. To the extent that a home heating customer must look to both his or her heating supplier and to his or her utility to receive complete RCS Program services and benefits, the effectiveness of the program will be reduced and costs increased.

Section 456.317(c) requires the State Plan to include the procedures by which the Governor or the Lead Agency will waive requirements of the Plan for individual home heating suppliers. However, subsection (c) also lists those Plan requirements, discussed below, which we propose to prohibit the Governor from waiving for any home heating supplier who chooses to participate. In general, these are procedural requirements for those activities which the home heating supplier performs.

Paragraph (c)(1) requires the State Plan to contain compliance and enforcement procedures for participating home heating suppliers. We expect that the State penalties for utilities will be different from those for home heating suppliers. We recommend that the only penalty for failure by a home heating supplier to perform a required function be removal from the program.

Paragraph (c)(2) says that the benefits described by § 456.305, such as complaint resolution procedures and coverage of material and installation standards, must apply equally to customers of utilities and to those of home heating suppliers. For example, if a State decides that any customer who has an energy audit performed by a covered utility is then eligible for the complaint resolution procedures for a subsequent installation, whether or not that installation is "arranged," then any customer for whom a home heating supplier performs an energy audit must also be eligible for such procedures. Note that this does not mean that all home heating suppliers must provide the same audits as all utilities.

Paragraph (c)(3) says that if a home heating supplier provides a Program Announcement to its eligible customers, then the estimates of energy cost savings contained in that Announcement must meet the requirements of § 456.306(c) regarding calculation procedures.

Paragraph (c)(4) says that if a home heating supplier provides an energy audit of any suggested measure to its eligible customers, then the auditing methods must meet the requirements of § 456.307(d)(3).

Paragraph (c)(5) says that, with respect to those activities required by the State of a home heating supplier, such supplier must perform those activities in conformance with certain procedures which prohibit anticompetitive activities or unfair discrimination. For example, if the home heating supplier performs energy audits and also sells measures, then the auditor must disclose this interest in the sale of measures.

Paragraph (c)(6) sets those minimum reporting and recordkeeping requirements which we believe essential for any participating home heating supplier, regardless of size. We seek comment on whether these requirements will unduly restrict participation by home heating suppliers.

In developing these rules for home heating suppliers, we have examined most carefully the capabilities of suppliers of #2 heating oil. NECPA allows Governors to include suppliers of propane, butane, and kerosene, and perhaps other fuels. We seek comment

about the suitability of our proposed rules for such suppliers.

Nothing in NECPA or in the Proposed Rule prohibits any home heating supplier from selling, installing, or financing any suggested measure. NECPA does prohibit such activities by utilities, except for certain situations. In those certain situations, NECPA treats utilities and home heating suppliers equally. If a utility does supply, install, or finance measures, NECPA requires certain guarantees of competition to be in the State Plans. Section 214(b) of NECPA also requires these same guarantees to apply to home heating suppliers who sell, install, or finance suggested measures. Both utilities and home heating suppliers who install and finance measures are in a special position with regards to their competitors. That is, they might gain an unfair advantage over their competing installers and lenders as a result of this Government sanctioned program. Therefore, the Proposed Rule treats such utilities and home heating suppliers equally in protecting competition (see §§ 456.306, 307, 308, and 309). We seek comment on the fairness and the effect of these provisions.

R. REPORTING AND RECORDKEEPING

NECPA does not establish any reporting requirements for States, but instead gives the Secretary general authority to make such a requirement. The purposes of this section are to collect data for measuring overall program activity and to retain records for more thorough evaluation later. DOE has developed a preliminary evaluation plan for this program, and is considering many alternative ways of evaluating the program.

We considered requiring each State, as part of its reporting requirements, to analyze certain results and perform its own evaluation. We encourage States, as part of their planning process, to establish their own goals for the program and to develop evaluation plans tailored to their own State Plans. In particular, we seek comment on whether we ought to require States to estimate annually the energy savings which have resulted from their programs. Such an estimate could either be based on actual measurements of changes in fuel consumption, or, with less certainty, based on estimates of savings from the energy audits.

Subsection (a) contains the contents of the annual report which the States are required to submit, beginning July 1, 1981.

Paragraphs (1) through (4) require lists of the utilities and home heating suppliers participating in the program, and of those utilities supplying, installing, or financing suggested measures

as allowed by Subpart E. Paragraphs (5) through (12) list the program activities which must be tabulated and reported annually. We have included virtually every major program activity in this tabulation, and seek comment on the difficulty of collecting this information. Paragraph (13) requires a report of whether any proposed legislation or regulations, which are required by §§ 456.303 and 456.315, has been enacted.

Subsection (b) requires certain records to be kept. The purpose of these requirements is to assure that an accurate evaluation can be performed in the future. For example, we will want to know what factors have contributed to the success or failure of the auditing programs run by various States, utilities and fuel suppliers. We will want to learn the response of people who have had audits performed, and thus we require the States to assure that the names of these people are retrievable. Subsection (b) does not necessarily require that lists of names be retained, only that the names are retrievable from whatever records are kept.

Paragraph (b)(6) requires that utility and fuel bills be retained for a period of two years. In order to measure the effect of conservation improvements on energy consumption, utility and fuel bills must be available for the year before and the year after the improvement. We seek comment on whether these records are retained by most utilities and fuel suppliers already, or whether this would be a substantial new recordkeeping requirement.

Paragraph (7) requires that the States maintain a record of the individuals who have met the qualification criteria and update such record within a reasonable time following each implementation of the procedures. DOE requires that a separate record be maintained for installers and inspectors of vent dampers, electronic ignition devices, and wind systems. This determination was made to assure that an individual who is properly qualified to install/inspect these particular measures appears only on the record for that measure rather than on a composite record.

In addition to the reporting requirements established by the States and the Department, participants in the RCS Program should be aware that the Federal Trade Commission is required by Section 225 of NECPA to study the implementation of the RCS Program and to submit a report on the program to Congress and to the President by January 1, 1982. Some of the information that is collected by the Department of Energy will be made available to the staff of the Commission. In addition, the staff of the Com-

mission may contact participants in the RCS Program directly during the preparation of the Commission's report.

V. SUBPART D—NONREGULATED UTILITY PLANS

Sections 212(c) and 214(a) of NECPA contain essentially the same requirements for Nonregulated Utility Plans as are contained in NECPA for State Plans. Accordingly, Subpart D of these rules, dealing with Nonregulated Utility Plans, contains parallel provisions to Subpart B, dealing with the procedure for submission and approval of plans, and incorporates by reference Subpart C, dealing with the content of plans. Specific exceptions from or amendments to Subpart C provisions are provided in Subpart D with respect to provisions in Subpart C which are not appropriate for Nonregulated Utility Plans.

In addition, Subpart D specifically provides in § 456.408(h) that upon written agreement with the State a nonregulated utility may adopt certain parts of a State Plan by reference. Those parts are the portion of a State Plan dealing with the calculations of costs and savings in the Program Announcement, the calculation and procedures for energy audits, the preparation of the Master Record (as well as the updating and delisting requirements), the mandatory post-installation inspection of certain measures, the quality control random inspections, the qualifications for auditors, certain installers, and inspectors, and the complaints processing procedures. The purpose of this provision is to lessen the cost and burden for nonregulated utilities in carrying out the RCS program by enabling them to utilize State-developed or State-run services. Where nonregulated utilities incorporate those parts by reference, however, they may be treated much like nonregulated utilities subject to a State Plan. For instance, specific provision is made in § 456.408(h)(3) that if a nonregulated utility uses a State Master Record, the nonregulated utility loses control over who is listed and delisted on the lists which it distributes. Moreover, a State, as a condition of allowing the nonregulated utility to utilize a State-developed or State-run service, may require the nonregulated utility to subject itself to such oversight or controls as may be appropriate with respect to that service.

VI. SUBPART E—SUPPLY, INSTALLATION, AND FINANCING BY UTILITIES

Sections 216 of NECPA addresses the supply, installation, and financing of residential energy conservation and renewable resource measures by a covered utility. Section 216(a) of NECPA broadly prohibits such supply, instal-

lation, or financing. This prohibition was responsive to the fear that, if a utility not only audited a home but also supplied, installed, or financed measures, there was a substantial potential for anticompetitive or unfair and deceptive practices. Section 456.502(a) of the Proposed Rule repeats the prohibition of Section 216 of NECPA. Section 456.502(b) makes clear that, notwithstanding the exemptions from this prohibition provided by NECPA, which are described below, where the Secretary finds that such exempted activities have anticompetitive effects, he may impose the prohibition. Violations of the prohibitions of § 456.502 (a) or (b) (Section 216 (a) or (g) of NECPA) are punishable by a civil fine assessed by the Secretary for \$25,000 for each day of violation. Again, this merely restates the applicable NECPA provisions (see Sections 215(h) and 219) which also specify the procedure by which such fines may be assessed. Section 456.501 defines "supply," "install," and "finance" for purposes of subpart E. It should be noted that if a utility leases a measure to an eligible customer, it is considered installed by the utility, no matter who does the actual installation.

Notwithstanding the prohibition in Section 216(a) of NECPA, NECPA provides a number of exceptions from this prohibition. The exceptions provided in Section 216 (b) and (c) for loans under \$300 and the supply, installation, and financing of certain measures are repeated in § 456.503. The grandfather provision for existing or advertised supply, installation, or financing activities by utilities (Section 216(d) (1) and (2) of NECPA) is repeated in Section 456.504 (a) and (b). Section 456.504 also makes clear that the prohibitions of § 456.502 (Section 216(a) of NECPA) do not become effective until 30 days after the final promulgation of these rules, and they are further delayed by an application to DOE for the requisite determination. These provisions are necessary to insure that prior existing utility supply, installation, or financing activities which NECPA intended to continue are not interrupted pending the development of these rules, see 44 FR 6378 (February 1, 1979), or the making of the requisite determination. Section 456.505 provides for waivers of the prohibition in § 456.502 (Section 216(a) of NECPA) upon the findings required by Section 216(e) of NECPA.

The determinations required by § 456.504 (Section 216(d) (1) and (2) of NECPA) have been delegated to the Office of Hearings and Appeals of DOE. This office has often been assigned responsibility for DOE adjudicatory determinations not required by statute to be made on the record. It

has established procedures for such determinations and gained expertise in their utilization. Section 456.507(a) references that portion of 10 CFR where those procedures are found. Only one additional requirement is added to those procedures: a requirement that an applicant or petitioner give notice of his application or petition to the applicable Governor, State Energy Office, and State Regulatory Authority. This is to ensure that those State agencies with responsibility for the Residential Energy Conservation Program are apprised of a particular utility's desire to supply, install, or finance residential energy conservation or renewable resource measures.

The findings required by § 456.505 (Section 216(e) of NECPA) have been delegated to the Assistant Secretary for Conservation and Solar Applications who has overall program responsibility for the Residential Conservation Service Program.

The last exemption from the prohibition in Section 456.502 is an exemption for the supply, installation, and financing of residential energy conservation and renewable resource measures by a utility where a prior existing State law or regulation either required or explicitly permitted the utility to engage in such activity. The Conference Report on NECPA indicated that it was the conferees' intent that under certain circumstances measures merely "contemplated" by a State statute or regulation might be included within this exemption. DOE also learned that the State of Michigan had passed a law before the enactment of NECPA which authorized the Michigan public service commission to approve energy conservation programs, specifically indicating that the law was to qualify Michigan utility programs for certain Federal exemptions. The Michigan public service commission, however, did not act until after the enactment of NECPA. Section 456.506(a)(1) exempts utilities from the prohibition in § 456.502 where the State law or regulation is clear and unambiguous. However, it is apparent that it was NECPA's purpose to provide exemption in circumstances where the law merely "contemplated" certain measures or other circumstances where the effect of the State law or regulation might be unclear, as is the case with the State of Michigan. Section 456.506(a)(2) is intended to address such situations by enabling the chief law officer of the State to certify that the State law or regulation did indeed intend to require or permit the otherwise prohibited activity. Because the ambiguity would arise under State law, it is appropriate that the determination be made by a State officer.

Subsection (b) of § 456.506 is intended to clarify the last sentence of Sec-

tion 216(f) of NECPA. That sentence does not exempt "programs" from compliance with Section 215 of NECPA. Rather it exempts from Section 215's requirements only those actual supply, installation, or financing activities which a utility is engaged in by reason of a State law or regulation in existence on November 9, 1978. Thus, utilities which are excepted from the prohibition in § 456.502 (Section 216(a) of NECPA) by reason of § 456.506(a) (Section 216(d)(3) of NECPA) still must fully comply with all the requirements of the State (or Nonregulated Utility) Plan described in Subpart C (or D, with respect to nonregulated utilities), but there is no requirement that the actual supply, installation, or financing activities conducted by the utility be included in the utility's program under the State Plan (or Nonregulated Utility Plan).

The effect of this requirement is that utilities which have "programs" that include utility supplied, installed, or financed measures authorized or required by State laws must still implement a Residential Conservation Service Program with respect to all suggested measures; that is, the utility must send a Program Announcement, offer an energy audit, and arrange installation and financing of all suggested measures, and these activities must conform to the requirements of the State Plan as described in Subpart C. When the utility's prior "program" is inconsistent with these requirements, the utility may have certain options. First, and presumably least desirable, the utility may be able to run two separate programs, one meeting the requirements of the State Plan and one which does not. Second, the utility may be able to adjust its prior "program" to conform to the requirements of the State Plan. Third, the utility may seek a Temporary Program exemption from certain of Section 215's requirements.

It is believed that the flexibility afforded the States under Subpart C (and nonregulated utilities under Subpart D) will enable State Plans to incorporate within their terms most existing utility programs (whether or not those programs were permitted or required by State law) with but minimal changes (although in many cases the measures covered by the prior program will have to be substantially enlarged). Where this is not possible, DOE expects utilities with substantial programs underway to seek temporary program exemptions.

DOE has not at this time proposed a regulation giving DOE broad authority to tailor Section 215's requirements in light of already ongoing "programs," whether or not those programs were required or permitted by State law. This is due to the belief

that much tailoring can be accomplished within the terms of State Plans and temporary program exemptions as well as the fact that Congress apparently saw no reason to provide for such a provision. DOE, however, solicits comments on the problem of incorporating existing programs, both those required or permitted by State law as well as those begun by utilities on their own initiative, into the RCS Program, in order to determine if the proposed regulations are sufficient in this respect or whether additional provisions are necessary.

VII. SUBPART F—FEDERAL STANDBY AUTHORITY AND ENFORCEMENT PROVISIONS

Section 219 of NECPA provides procedures to insure that eligible customers the services of the Residential Conservation Service Program when a State or nonregulated utility fails to submit an acceptable Residential Conservation Service Plan or fails to implement adequately an approved Plan. The Secretary shall invoke the Federal standby authority whenever an acceptable plan has not been submitted by a State or nonregulated utility within the requisite time or whenever an approved plan is not being adequately implemented by a State or nonregulated utility. If a nonregulated utility is included in a State Plan that is not approved or is not implemented adequately, however, such nonregulated utility shall not be subject to the Residential Conservation Service Plan promulgated by the Secretary. In those cases the nonregulated utility shall prepare and submit a Residential Conservation Service Plan as required by Subpart D. The submission of that plan shall be within a reasonable period of time as determined by the Secretary.

Before the Secretary can determine that a State Plan is not being implemented adequately, Section 219 of NECPA accords the State a right to notice and an opportunity for a public hearing. Although Section 219 does not provide nonregulated utilities an opportunity for a right to notice and a public hearing before the Secretary determines that a plan is being implemented inadequately, DOE is not aware of any reason why the nonregulated utilities should be treated differently. Accordingly, DOE intends to treat the states and nonregulated utilities in the same manner when determining the adequacy of their respective implementation of approved Residential Conservation Service Plans.

Once a determination is made that Federal standby authority should be implemented, the Secretary shall promulgate a plan for covered regulated utilities in the given State or, by order, require nonregulated utilities to pro-

mulgate plans. The plans promulgated, or ordered to be promulgated, by the Secretary pursuant to Section 219 of NECPA will be consistent with the requirements of Subpart B and C or D, as appropriate.

Section 219 of NECPA establishes procedures for enforcing plans promulgated under the Secretary's standby authority. The enforcement provisions include a \$25,000 civil penalty for violations of requirements of plans promulgated by the Secretary or of orders issued by the Secretary. The enforcement provisions of Section 219 also apply, as provided in Section 216(h), to violations by public utilities of the supply, installation, and financing prohibitions of Section 216.

DOE does not intend to issue more specific regulations concerning the invocation and implementation of Federal standby authority. We are of the opinion that it will be preferable for the Secretary to be able to respond to his Federal standby responsibility on an ad hoc basis.

We note that the Environmental Protection Agency (EPA) has had a similar standby authority for several years under the Clean Air Act amendments of 1970 and has not issued regulations pursuant to that authority. Nonetheless, it is DOE's understanding that EPA, pursuant to its standby authority, has rejected some State plans and we perceive EPA's actions as precedent for the Secretary's decision to not issue more detailed standby regulations pursuant to Section 219. If interested persons believe more detailed regulations are appropriate, their comments and suggestions as to the content of such regulations are solicited.

VIII. SUBPART G—RENEWABLE RESOURCE INSTALLATION AND MATERIAL STANDARDS

NECPA requires the Secretary to determine if safety and efficiency standards are necessary for "residential energy conservation measures," including renewable resource measures. If such standards are necessary, DOE must prescribe them by rule. DOE has examined the intended use of renewable resource measures, industry standards (both existing and those in development) and the potential for consumer dissatisfaction. DOE has also examined existing Federal Standards, such as HUD's Minimum Property Standard (MPS).

The voluntary standard system consisting of industry, labor, code officials, and consumers is represented on the Steering Committee for Solar Energy under the aegis of the American National Standards Institute (ANSI). This Committee has developed and is continuing to develop at an accelerated pace standards to meet the needs for solar technology and

solar purchasers. Within this framework, testing and certification programs are now being developed to establish a uniform rating procedure and methods for presentation including product labels.

DOE is currently developing a Model Document for Code Officials on Solar Heating and Cooling of Buildings. This comprehensive document will address installation, materials and other subjects covered in building codes relating to solar energy. Although intended to be adopted by States and localities DOE will consider amending this rule to require adherence to the Model Document.

Based on the analysis of these various factors, DOE has determined that the HUD MPS adequately covers both the material and installation standards for solar domestic hot water and active solar space heating systems (including combinations thereof). The solar energy industry is currently developing labeling criteria and performance standards. When adopted by the industry these will be examined for adequacy and may be adopted as amendments to this rule. DOE felt that the presence and acceptance of the HUD MPS represented adequate consumer protection and procedural standards for this solar equipment. The HUD MPS addresses performance, safety and installation considerations and represents an adequate, comprehensive standard for the purpose of these rules. One exception to this statement is the HUD MPS's failure to address solar thermosiphon hot water heaters. DOE has not yet developed standards for these devices and a section of the rules is reserved for these standards.

The HUD MPS provides that certain exceptions or alternative approaches to the prescriptions therein are acceptable if approved by HUD. The HUD MPS, however, was developed as a standard for HUD programs, and it is appropriate for HUD to grant exceptions from its standards. The Residential Conservation Service (RCS) program, however, is not a HUD program, and HUD is not involved in its implementation, thus, it would be inappropriate for HUD to grant exceptions from standards for the RCS program. Accordingly, DOE has provided in §456.702 that provisions in the HUD MPS that allow for exceptions or alternatives approved by HUD to do not apply under the RCS program. DOE solicits comments on this approach and any alternatives.

Voluntary consensus standards for wind systems are now being developed. DOE supports the development of these standards. Premature implementation of Federal standards may inhibit development of wind systems and result in unnecessary price increases.

However, wind energy systems present unique problems of safety, involving both the device itself and its location. Therefore, DOE has developed standards related to siting criteria and wind machine characteristics. In developing these criteria, DOE considered information available from Rocky Flats Lab and various States offering tax incentives for wind energy systems.

Passive solar space heating and cooling systems present special problems. First, it is a developing technology, and, as noted above with respect to wind systems, premature Federal standards could inhibit the growth of this field as well as unnecessarily increase costs. Second, there are numerous different devices which vary greatly in cost, heating/cooling output, and methodology. These factors, DOE believes, militate against prescribing any standard for installation or materials for passive systems at this time. DOE is continuing research in this area and intends in the future to prescribe standards for at least some passive systems. DOE solicits comments on this approach and any alternatives.

Swimming pool heaters using non-renewable fuels or sources of energy are common in certain areas of the U.S. The use instead of solar energy to heat pools can result in significant energy savings in such areas. DOE has not yet determined what standards are necessary for this technology. Research, however, is continuing, and DOE intends to prescribe a standard for solar swimming pool heaters in the future. DOE solicits comments relative to solar swimming pool heaters.

IX. SUBPART H—ENERGY CONSERVATION MATERIAL STANDARDS

BACKGROUND:

NECPA requires the Secretary of Energy to develop and publish standards that he determines are necessary to assure the safety and effectiveness of materials and products designated in NECPA as "residential energy conservation measures".

In developing proposed standards for these materials and products, DOE has drawn upon work conducted by the National Bureau of Standards (NBS) under a DOE contract. This work was begun as part of the Weatherization Program in 1975. DOE has accepted most of the recommendations contained in the National Bureau of Standards Technical Note 982 entitled *Criteria for Retrofit Materials and Products for Weatherization of Residences* (September 1978). The original version of this NBS report, NBSIR-75-795, issued in 1975, was subjected to extensive public, industry and government review. The revised recommendations contained in NBS Technical Note 982 are based on available technical information on the

properties and performance of retrofit materials and products.

The proposed rules also reflect the contribution of several other Federal agencies. Following the establishment of rules for the Weatherization Assistance Program for Low-Income Persons, (FEDERAL REGISTER June 1, 1977), DOE reviewed the standards for weatherization materials contained in those rules. DOE concluded that some of those standards failed to provide adequate test methods, specifications for certain types of insulation material did not exist and that there were conflicts where two or more standards were cited for the same insulation material. Therefore, an informal interagency committee, comprised of representatives from DOE, the NBS, Department of Commerce, the Department of Housing and Urban Development, the Consumer Product Safety Commission, the National Fire Prevention and Control Administration, the Federal Trade Commission, and the General Services Administration, was formed for the purpose of reviewing further weatherization material specifications. This interagency committee, following its consideration of alternative standards, concluded that the specifications should be amended to remove inconsistencies in the Federal specifications cited, to eliminate references to irrelevant requirements in the federal specifications, and to include recently-developed fire safety test methods.

In November 1978, DOE issued a technical report entitled *Material Criteria and Installation Practices for the Retrofit Application of Insulation and Other Weatherization Materials* (DOE/CS-0051). The technical report, which was announced in the FEDERAL REGISTER (November 16, 1978), solicited written comments on the recommended material criteria and installation practices for materials and products suitable for residential retrofit application. The comments which DOE has received were reviewed and considered in drafting the proposed regulations on material standards.

SCOPE OF THE PROPOSED REGULATIONS:

The standards being regulation apply to the following materials and products or components thereof:

- Cellulosic or wood fiber loose-fill thermal insulation.
- Mineral fiber loose-fill thermal insulation.
- Mineral fiber blanket or batt thermal insulation.
- Vermiculite thermal insulation.
- Perlite thermal insulation.
- Polystyrene thermal insulation board.
- Polyurethane and polyisocyanurate thermal insulation board.

- Urea formaldehyde foam insulation.
- Aluminum foil reflective insulation.
- Storm windows (aluminum, wood, and rigid vinyl frame).
- Storm and thermal doors.
- Caulks and sealants.
- Heat absorbing and heat-reflective glazing.
- Heating and air conditioning duct insulation.
- Water heater insulation.
- Load management devices.
- Clock thermostats.
- Aspects of Multiglazed insulating glass units for windows and doors.
- Automatic vent damper devices for use with gas-fired furnaces (electrically, mechanically and thermally activated).
- Vent dampers for oil-fired furnaces.
- Automatic gas ignition systems.
- Replacement oil burners.
- Replacement gravity and forced air central gas furnaces.
- Replacement gas-fired low pressure steam and hot water boilers.
- Replacement oil-fired central furnaces.
- Replacement oil-fired boiler assemblies.
- Replacement Heat Pumps.

TECHNICAL ISSUES

A guiding principle in the preparation of these material and product standards has been to use either existing Federal specifications or commercial standards wherever they adequately address the question of safety and effectiveness. The Federal specifications used were originally promulgated by the U.S. General Services Administration (GSA) for government procurement only.

The following GSA Federal Specifications were used in whole or in part:

- HH-I-521E—Federal Specification for Mineral Fiber Blanket/Batt Insulation.
- HH-I-1030A—Federal Specification for Mineral Fiber Loose-Fill Insulation.
- HH-I-515D—Federal Specification for Wood Fiber, or Cellulosic Loose-Fill Insulation.
- HH-I-574B—Federal Specification for Perlite Insulation.
- HH-I-585C—Federal Specification for Vermiculite Insulation.
- HH-I-524B—Federal Specification for Polystyrene Insulation Board.
- HH-I-530A—Federal Specification for Polyurethane and Polyisocyanurate Insulation Board.
- HH-I-1252B—Federal Specification for Aluminum Foil Reflective Insulation.
- TT-P-00791B—Federal Specification for Putty.¹

¹ Used in whole.

● TT-G-410E—Federal Specification for Glazing Compound.¹

● TT-C-00598C—Federal Specification for Oil and Resin Base Caulks.¹

● TT-S-00230C—Federal Specification for Acrylic Sealant.¹

● TT-S-001657—Federal Specification for Butyl Rubber Sealant.¹

● TT-S-00230C—Federal Specification for chlorosulphonated Polyethylene Sealant.¹

● TT-S-00227E—Federal Specification for Polysulfide Multicomponent Sealant.¹

● TT-S-001543A—Federal Specification for Silicone Sealant.¹

Commercial standards and test methods cited in this proposal were drawn from the following sources:

● American Society for Testing and Materials (ASTM) standard specifications.

● American National Standards Institute (ANSI) product standards.

● Underwriter Laboratory (UL) product standards.

● Industry standards of trade associations (such as the National Woodwork Manufacturers Association or the National Electric Manufacturers Association).

The American Society for Testing and Materials (ASTM) is a scientific and technical organization that establishes voluntary consensus standards for materials and products. ASTM operates through approximately 120 technical committees and sponsors more than 125 research projects to develop new test methods and material standards and to improve existing test methods and standards. ASTM has developed more than 5,200 standard test methods. ASTM members are engineers, scientists and skilled technicians. Private firms, government agencies, as well as individual memberships, are recognized.

The American National Standards Institute (ANSI) is a voluntary federation whose purpose is to bring to bear on standardization needs the cooperative efforts of commerce and industry, standards-developing organizations, and consumer interests. ANSI also provides a recognized mechanism in the United States for establishing consensus standards. This consensus mechanism requires that every proposed standard submitted to ANSI for approval be subjected to a period of public review and comment. During this period any interested person may obtain a copy of the draft and submit comments which must be considered by the originating committee. ANSI's Board of Standards Review then determines, on the basis of evidence presented, if national consensus exists.

Underwriter Laboratory is a not-for-profit independent organization for testing products for public safety. It maintains and operates laboratories

for examining and testing of devices, systems, and materials to determine their relation to life, fire and casualty hazards.

Some of the proposed standards contain new provisions that are not drawn from either Federal Specifications or commercial standards. The procedure for determining settled density of cellulosic loose-fill insulation is an example of such a new provision.

DIFFERENCES BETWEEN DOE PROPOSED STANDARDS AND GSA FEDERAL SPECIFICATIONS

Materials used for thermal insulation should meet requirements for thermal resistance,² fire safety, non-corrosiveness, and resistance to moisture absorption, odor-emission and fungi. Although GSA Federal Specifications are available which contain requirements for most of these material properties, the GSA Federal Specifications for mineral fiber loose-fill and mineral fiber blanket insulation do not contain standards for resistance to fungi and odor. The DOE standards, however, do contain these provisions.

The following Federal Specifications currently require that the fire performance of the various insulation materials be evaluated according to the test procedures described in ASTM E84 "Surface Burning Characteristics of Building Materials": HH-I-521E (Mineral Fiber Blankets/Batts); HH-I-1030A (Mineral Fiber Loose-Fill); HH-I-524B (Polystyrene Board). The NBS, which is the recognized fire safety research arm of the federal government, has judged that there are certain insulation applications for which the ASTM E84 test method does not adequately assess the response of insulation to flame and heat. The NBS has therefore recently developed two new fire safety test procedures: the critical radiant flux test and the smoldering combustion test. The GSA has included these two test methods in its specification for Cellulosic Loose-fill Insulation, HH-I-515D. The proposed DOE standards differ from existing³ GSA Federal Specifications in that the DOE standards also require these tests for mineral fiber loose-fill and blanket insulation and aluminum foil reflective insulation. The proposed DOE standards for Polystyrene, Polyurethane, and Polyisocyanurate Insulation Board also require the smoldering combustion test whereas the GSA Federal Specifications for these materials do not. DOE believes that the smoldering combustion test is necessary to assure the fire safety of these materials.

²The thermal resistance of a given piece of insulation is designated as its "R-value".

³DOE has been informed that GSA will be proposing the same changes in its Federal Specifications.

STANDARDS FOR THERMAL INSULATION

● Mineral Fiber Blanket Insulation

After consulting with the staffs of the Consumer Product Safety Commission (CPSC), GSA, and the FTC, DOE is proposing regulations with respect to fire safety of mineral fiber blanket/batt insulation (including fibrous glass) that are consistent with the positions of these agencies.³ The CPSC has considered the alleged risk of injury from fire associated with the membrane covering of fibrous glass insulation in Petition CP-77-1 (Metropolitan Denver District Attorney's Consumer Office in re: Hazards in Home Insulation). The CPSC decided that, based on available information, an unreasonable risk of injury from fire is not associated with the membrane-covering of mineral fiber blanket/batt insulation and that a mandatory standard is not necessary for the covering.

While the proposed standards do not require the membrane covering for mineral fiber blanket/batt insulation to be tested for fire resistance, DOE will consider any evidence of incidents involving fires in which membrane-backed mineral fiber insulation was a contributing factor and solicits comments on this issue. However, mineral fiber blanket insulation that requires breather papers for application purposes is required to be fire-resistant, because breather papers are exposed after installation.

● Mineral Fiber Loose-Fill Insulation

The DOE is currently developing a new procedure for determining the design density of mineral fiber loose-fill insulation. Density determination is important because other material properties, such as thermal resistance, vary with density. The current GSA specification for mineral fiber loose-fill insulation (HH-I-1030A) contains a procedure for density measurement which does not account for the effects of settling. DOE believes that the new procedure will measure densities of mineral fiber loose-fill insulation more accurately than the GSA procedure. The test procedure will be proposed for public comment at a later date.

● Cellulosic or Wood Fiber Loose-Fill Insulation

Federal Specification HH-I-515D, which superseded HH-I-515C on June 15, 1978, is the current GSA specification for loose-fill cellulosic insulation. It contains physical property requirements for thermal resistance, fire safety, corrosion-resistance, resistance to moisture absorption, odor emission and fungi, and a procedure for determining settled density. Fire safety tests required by HH-I-515D are the critical radiant flux and smoldering combustion test. The Department of Housing and Urban Development cur-

rently uses HH-I-515D as the Minimum Property Standard for cellulosic insulation. The previous Federal Specification (HH-I-515C) required a different fire safety test method (ASTM E 84) and corrosion-resistance test.

On July 11, 1978, the Emergency Interim Consumer Product Safety Standard Act of 1978, Pub. L. 95-319, became law. This legislation amended the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) by adding section 35 that required the CPSC to issue an interim consumer product safety standard for cellulosic insulation, based on the requirements for flame resistance and corrosiveness in the GSA specification HH-I-515C. Pub. L. 95-319 modified flame spread classification to Class 25 only using the screen correction factor required in ASTM C739-77. Pursuant to the statute, the CPSC published on August 8, 1978, the interim consumer product safety standard addressing the flammability and corrosiveness of cellulose insulation (43 FR 35240). The interim standard applied to all cellulosic insulation manufactured after September 7, 1978.

The Emergency Interim Consumer Product Safety Standard Act of 1978 also provides that, until a final consumer product safety standard is in effect, the CPSC must publish for public comment any amendments to the interim standard the GSA issues that supersede the requirements for fire resistance and corrosiveness in Federal Specification HH-I-515C. The GSA has informed the CPSC that, effective June 15, 1978, it has issued GSA Specification HH-I-515D. Since this specification contains requirements for fire resistance and corrosiveness for cellulosic insulation that supersede the requirements in HH-I-515C, the CPSC is required to publish the fire resistance and corrosiveness provisions of HH-I-515D as a proposed amendment to the interim standard and receive comments thereon. Comments on the CPSC proposed amendment to the interim standard will be completed in June 1979 and CPSC expects to publish the final standards in September 1979.

To assure conformance between DOE and CPSC proposed standards for loose-fill cellulosic insulation, this proposed rule contains requirements for fire safety, corrosion-resistance, and a procedure for determining settled density that are identical to those in the CPSC proposal. The proposed standard for cellulosic or wood fiber insulation contains a requirement for flame resistance permanency which is designated "reserved." According to the CPSC, questions have emerged about the life span of boric acid, the flame retardant most commonly used in cellulosic insulation. There is cur-

rently no satisfactory method for testing the flame spread permanency of cellulosic or wood fiber insulation. The proposed DOE standard indicates that such a test is "to be determined." The other material standards for loose-fill cellulosic insulation (thermal resistance, and resistance to odor emission, moisture absorption, and fungi) contained in this proposed rule will be unaffected by the CPSC actions.

DOE is proposing in this regulation a new procedure for determining the settled density of cellulosic loose-fill insulation, called the "cyclone-shaker" method. Density determination is important because other material properties, particularly thermal resistance, vary with density. The current GSA specification (HH-I-515D) contains a procedure that requires 28 days to run. DOE believes that its proposed procedure of much shorter duration measures density with equal accuracy.

● Urea-Formaldehyde Foam Insulation

Following the advice of the interagency task force on material standards, DOE has developed a material standard for Urea-formaldehyde (UF) foam insulation. There are two problems associated with the use of UF foam insulation.

● Formaldehyde vapor is sometimes given off in small quantities from UF foam insulation. This vapor has a noxious odor and can irritate the eyes and respiratory tract. The health effects from exposure to a particular level of formaldehyde vapor vary greatly from person to person.

● UF foam shrinks during setting, reducing the insulation's thermal resistance. The shrinkage rate and its effect on thermal resistance reduction have been estimated by the NBS and the method for determining thermal resistance adjusts for this effect. In addition, a DOE study is underway to measure the shrinkage rate of UF foam insulation and its effect on thermal resistance.

DOE has several studies underway to determine the factors which may contribute to the release of formaldehyde vapor in houses insulated with UF foam. Sufficient data has already been obtained to link this formaldehyde problem to several specific factors:

- Excessive free formaldehyde content of the resin
- Improper ratio of resin to foaming agent
- Installation under improper temperature conditions
- Installation in improper locations.

The DOE believes that these problems are preventable by means of adequate material standards and installation requirements. The standards for UF foam insulation contained in these rules, which are identical to the Cana-

dian UF Foam Standard, are proposed as interim standards pending completion of the above-mentioned DOE studies. The Canadian standard is used because the Canadian Government has reported a significantly lower rate of formaldehyde vapor incidents than have been reported in the United States. However, if we find substantial evidence of significant health problems with this standard, it will be removed from our rules. We seek comments on this approach.

FIRE SAFETY TESTS

The three fire safety requirements contained in these proposed standards are: Critical radiant flux, smoldering combustion, and surface burning characteristics. The NBS has recently developed test methods for the first two requirements. The ASTM test method for determining surface burning characteristics (ASTM E84) has been in use for several years.

Critical radiant flux is the level of incident radiant heat energy on the insulation below which flames will cease to propagate. For insulation used in open attic floors the critical radiant flux should be equal to or greater than 0.12W/cm². The critical radiant flux should be determined by the attic floor radiant panel test procedure described in §456.803(d)(3) of these proposed regulations. This test method provides a basis for evaluating the surface flame spread behavior of attic floor insulation in a building attic.

The smoldering combustion test determines the tendency of the insulation to support and propagate smoldering combustion subsequent to exposure to a standard localized ignition source. The smoldering combustion test procedure is described in §456.803(d)(4) of these proposed regulations.

The ASTM E 84-77 flame spread test method should be the basis for evaluating surface burning characteristics. This test method is recommended for polystyrene, polyurethane, and polyisocyanurate insulation board, and aluminum foil insulation.

PRODUCTS NOT COVERED BY FEDERAL SPECIFICATIONS OR STANDARDS

There are no Federal Specifications or Standards for the following products:

- Storm and thermal doors
- Storm and thermal windows
- Clock thermostats
- Multiglazed insulating glass units for windows and doors
- Heat absorbing and heat-reflective glazing
- Heat pumps
- Load management devices
- Vent dampers
- Automatic gas ignition devices
- Replacement oil burners

● Replacement central gas and oil-fired furnaces, and

● Replacement boilers

The accepted industry standards for storm doors and windows, thermal doors, and clock thermostats are proposed for adoption by DOE. The DOE is proposing to adopt existing American National Standards Institute (ANSI) standard for automatic vent dampers on gas, automatic gas ignition devices, oil burners, replacement central gas and oil-fired furnaces, and boilers. A proposed Underwriters Laboratory standard is proposed for heat pumps and vent dampers on oil-fired appliances. DOE is proposing a proposed ASTM standard for the sealant on organically sealed multiglazed insulating glass units.

No Federal specification or standard and no commercial standard exists for load management devices. DOE is proposing performance criteria for such devices, including requirements that the devices have Underwriters Laboratory approval and be accepted by the local electric utility, in lieu of specific material standards. Comments are solicited on this approach and its sufficiency.

With respect to weatherstripping and glazing compounds, DOE has determined that no standard is necessary for the RCS program as commercially available materials are suitable.

With respect to pipe insulation and energy usage display meters, DOE has not yet determined whether standards under the RCS program are necessary. Comments on this are solicited.

Finally, with respect to thermal windows, DOE believes that standards are necessary. We are evaluating various existing consensus or voluntary product standards for inclusion in the final rule.⁴ We seek comments on what standards are appropriate for thermal windows.

X. SUBPART I—ENERGY CONSERVATION INSTALLATION STANDARDS

BACKGROUND

NECPA requires DOE to promulgate standards which the Secretary determines to be necessary to assure the safe and effective installation of materials and products designated in the Act as "residential energy conservation measures."

In order to carry out the task for developing the necessary installation standards, an informal interagency committee was established which included staff from DOE, the National Bureau of Standards (NBS), the Consumer Products and Safety Commission (CPSC), and the Federal Trade

Commission (FTC). This Committee conducted an intensive search for existing standards for the installation of these materials and concluded that the few which existed were not adequate to ensure the safety and effectiveness of the installed materials. However, in the course of this research it was determined that various manufacturers and trade associations had developed installation instructions and recommendations for their products. The Committee evaluated these but concluded that in many cases they did not sufficiently address areas which the Committee felt were necessary to assure the safety and effectiveness of installations. Nevertheless, since these guidelines contained much relevant information, they were used as a cornerstone for the Installation Practices proposed herein. These guidelines are available in DOE's Docket File.

The Committee's task of developing comprehensive Installation Practices for insulation materials was especially difficult since there exist no standardized criteria by which to determine what constitutes proper or improper installation. Furthermore, many issues which relate to the safety and effectiveness of installations remain unresolved even though extensive and varied research has been conducted in both the public and private sectors. To a large extent this is due to the complexity of building behavior which appears to be shaped by environmental variables and occupant lifestyle as well as the building components themselves. The changes which take place in a building when insulation is added have been difficult to predict. Certain procedures, such as the addition of vapor barriers, blocking, or ventilation, may prevent the occurrence of some undesirable effects but much controversy exists over when such measures are necessary. The Committee has made a number of technical determinations on the basis of existing research results to produce Installation Practices directed at minimizing the occurrence of undesirable effects while maximizing safety and effectiveness. These determinations are discussed in further detail below, in the section entitled "Technical Issues."

DOE originally released certain of its recommended Installation Practices in November 1978 in a Technical Report entitled "Material Criteria and Installation Practices for the Retrofit Application of Insulation and Other Weatherization Materials" (DOE/CS-0051). This Technical Report, which was announced in the FEDERAL REGISTER (November 16, 1978), solicited written comments from interested parties. Written comments which were received prior to January 30, 1979, have been evaluated by the Committee and

responses have been sent to the appropriate group. The Practices contained herein reflect many of the substantive comments (See "Technical Issues" below).

PROPOSED REGULATIONS

Installation Practices are proposed in this regulation for the Residential Conservation Service Program for the following materials and products:

- Organic and mineral fiber loosefill thermal insulation
- Mineral fiber batts and blanket thermal insulation
- Organic cellular rigid board thermal insulation
- Mineral cellular loosefill thermal insulation
- Reflective insulation
- Storm windows, thermal windows, multiglazing units, heat absorbing/heat reflective glazing, and storm doors and thermal doors
- Clock thermostats
- Insulation on gasfired, oilfired, and electric resistance water heaters
- Replacement oil burners

DOE made a technical determination with respect to organic and mineral fiber loosefill materials to include these in a single installation standard. This determination was made on the basis of the methods of application and intended application of both materials. DOE concluded that differences between the two are minimal in these areas and that these differences could be addressed where necessary by a single Installation Practice.

DOE also made a determination not to include Installation Practices for caulking, sealants, and weatherstripping materials. DOE concluded that Installation Practices for these materials are unnecessary since improper installation will not produce potentially hazardous situations. In addition, any information which DOE could provide relative to proper installation for effectiveness may only duplicate existing manufacturers' instructions.

The proposed regulations do not contain Installation Practices for replacement furnaces and boilers (including heat pumps), load management devices, and energy usage display meters because DOE has not yet made a determination whether installation standards are necessary for these items.

DOE has not yet developed Installation Practices for vent dampers, automatic ignition devices, urea-based foam insulation, and pipe insulation. Standards for these devices will be completed in the near future, and a reasonable opportunity will be provided for comment prior to final rule-making. The American National Standards Institute (ANSI) recently promulgated material standards for vent dampers with accompanying in-

⁴In particular, we are considering adoption of AAMA Standard 1502-6-1977, (Voluntary Standards and tests of Thermal Performance of Residential Insulating Windows and Sliding Glass Doors.)m

stallation guidelines. DOE evaluated these guidelines and concluded that they did not adequately ensure a safe and effective installation. DOE was especially concerned that these guidelines did not sufficiently address the intended uses of the devices and their compatibility with other systems. DOE expects to develop standards for the safe installation of vent dampers in the near future.

DOE made other general determinations in the preparation of these Installation Practices. Since these Practices are addressed to professional installers under the Residential Conservation Program, DOE assumed that the installers possess a working knowledge of the methods necessary to carry out the installations or will be supervised by someone who possesses such knowledge. Therefore, rather than provide step-by-step installation instructions, these Practices present only the requirements intended to promote safe and effective installation. Furthermore, since the phrase "safety and effectiveness" was interpreted as meaning safety to the occupants of the building rather than the installer, a determination was made not to include provisions relating to the installer's safety. Requirements pertaining to the safety of persons installing many of these materials currently exist under Occupational Safety and Health Administration (OSHA) regulations.

While DOE has attempted to maximize the assurance of safe and effective installation through these Practices, it must be noted that these Practices cannot cover every situation. The U.S. building inventory is characterized by many types of construction, and some of it is relatively old. It is inevitable that installers will encounter situations which differ from those described in these Practices. In such cases they will need to rely on their judgment to take additional precautions to ensure that the materials are installed in a manner which does not compromise their safety or effectiveness.

TECHNICAL ISSUES

Insulation. Each of the Installation Practices is based on the best technical information available. However, because standardization in the area of installation does not exist, there are areas of conflict where judgments had to be made. Comments submitted as a result of the Technical Report showed that the following areas caused the most concern:

a. *Pre-Inspection/Post-Inspection.* In each Practice, the installer is required to conduct his own pre- and post-inspection. This is done to insure his awareness of potential problems while they may be easily corrected and to provide a checklist at the end of the

job to assure a safe installation has taken place.

b. *Heat-Producing Devices.* These devices include, but are not limited to, recessed lighting fixtures (with attached wiring compartments and ballasts), motors, fans, blowers, furnaces, chimneys and flues. The Practices require identification of these devices and a 3-inch air space separating them from the thermal insulation. Exceptions to the 3-inch air space requirement with respect to flues and chimneys are made for mineral fiber loose-fill and unfaced batt and blankets, and mineral cellular loosefill because the materials are noncombustible when tested in accordance with ASTM E136. The 3-inch air space around recessed light fixtures and the prohibition against covering these fixtures, (with attached wiring compartments and ballasts) are both contained in the National Electric Code (Article 419.66).⁵ They have been included in the proposed Practices since the covering of fixtures with insulation may lead to their overheating and the creation of associated fire hazards. When loosefill insulation is used, barriers must be installed around the heat source to ensure that the air space is maintained. The Technical Report did not include the use of unfaced mineral fiber batts as a barrier. The proposed Practices contained herein have been revised to include this material as a barrier.

c. *Prohibition Against Additional Wall Insulation.* The Installation Practices prohibit the application of insulation material in wall cavities which have been previously insulated. This is based upon three criteria:

• Additional wall insulation is not generally cost effective. To a large extent, the cost of additional insulation is attributable to the labor involved in the installation process. The addition of such material is unlikely to provide energy savings sufficient to offset the installation cost. This determination with respect to cost-effectiveness is supported by an economic analysis performed by NBS "Retrofitting Existing Housing for Energy Conservation," Building Science Series 64, NBS, Department of Commerce, Washington, D.C., (December 1974) which concluded "... if any insulation exists (in walls), blown-in insulation is not practical and unlikely to be cost-effective." (Ibid. P. 45).

⁵The National Electrical Code (NEC) is sponsored by the National Fire Protection Association under the auspices of the American National Standards Institute (ANSI). The purpose of the Code is "the practical safeguarding of persons and property from hazards arising from the use of electricity." The Code contains provisions considered necessary for safety. The NEC is available from the National Fire Protection Association, 704 Atlantic Avenue, Boston, MA 02210.

• Homeowners often do not know if wall insulation is present, or, if present, how much. It is therefore difficult for them to determine the cost-effectiveness of adding more.

• Installing wall insulation in a cavity where some exists greatly reduces the potential for an effective application since existing insulation restricts the access to the wall cavity.

d. *Moisture Transmission and Vapor Barriers.* There has been much controversy about the need for vapor barriers. A typical family of 4 may produce as much as 18-20 lbs or more of water vapor per day, if humidifiers, automatic washers and clothes dryers are used. This moisture is transported in one or more of the following three ways: By exfiltration or ventilation, by diffusion through envelope materials, or by condensation on windows or other cold surfaces. The "Report on Control of Condensation in the Walls and Ceilings of Retrofitted Homes," issued by NBS in December 1978, shows that the amount of moisture accumulation depends on the geographic location, indoor humidity level, and relative air moisture permeances of the inside and outside parts of the wall.

Vapor barriers have traditionally been used to retard the flow of moisture through walls and ceilings. The application of vapor barriers (in the form of low permeability paints or wallcoverings) in a retrofit situation is an expensive and time-consuming process and should not be required unless it can be shown that homes without vapor barriers are likely to experience moisture problems. Moisture problems may include deterioration or rot of wood structures or paint failures. Because geographic locations, and to some extent indoor humidity levels, are the only variables which can be easily identified, DOE based the requirement for vapor barriers on these. Vapor barriers are required in the walls and ceilings of bathrooms and unvented high-moisture areas in condensation Zone 1 as reflected in Figure 1 of the Installation Practices because condensation is most likely to occur here. Vapor barriers are not required on the ceilings in these rooms as long as some attic floor insulation existed previously. In addition to the vapor barrier requirements in Zone 1, contractors are required to caulk cracks around windows, wall outlets, ceiling fixtures, and between walls and ceilings, and walls and floors. This requirement was included because most experts agree that air leakage through cracks and openings in interior wall surfaces is a more significant moisture transfer mechanism than diffusion through wall coverings. The requirements for a vapor barrier is only effective if it is accompanied by a means

for sealing air leakage paths. Although DOE recognizes that moisture originating in bathrooms and laundry areas will not be confined there, it is felt that once moisture laden air leaves these areas, it will be sufficiently diluted so that the potential for moisture-related problems is minimal.

For condensation Zone 2, where the incidence of condensation is less prevalent, the requirements of Zone 1 have been included as recommendations. DOE opted to recommend rather than required these procedures since the need for such procedures is inconclusive in Zone 2. Instead, the installer is required to inform the homeowner of the options and to let such homeowners make the final decision about what precautions to take.

e. *Ventilation Requirements.* The required levels of free attic ventilation area are identical to the HUD minimum Property Standards. Although these levels are widely accepted, DOE recognizes that there may be circumstances where it is not practical to adhere to them too rigidly. If, for instance, a contractor finds slightly less than the recommended ventilation area, it may not be practical or necessary to add more. DOE solicits comments on how such flexibility might be built into the Practices. It is not necessary that the insulation and ventilation be installed at the same time. If weather conditions make ventilation installation impractical, this part of the contractual obligation may be completed within 6 months after the insulation has been installed.

f. *Insulation Over Wiring.* Laboratory tests conducted by NBS show that when thermal insulation is placed around electrical wiring, heat dissipation is restricted and resulting wiring temperatures exceed those allowed by the National Electrical Code (NEC) or Underwriter's Laboratory (UL) (See NBSIR 78-1477, "Exploratory Study of Temperatures Produced by Self-Heating of Residential Branch Circuit Wiring When Surrounded by Thermal Insulation"). NEC requires that the type of electrical wiring often found in existing residences not be operated at temperatures in excess of 140°F (Tables 310-16 through 19). When parallel nonmetallic sheathed cables carrying 135 percent of rated current were placed between two layers of R-11 insulation, NBS found that temperatures of 298°F were reached. The highest temperatures appear to occur when the electrical system is overfused. CPSC conducted a survey of low-income homes in several cities in the U.S. Among the samples surveyed in each city it was found that more than 50 percent of the homes, which use fusing as overcurrent protection, were overfused.

Overheated wiring circuits may ignite electrical insulation or adjacent building materials, or they may lead to gradual deterioration of the electrical system since the excessive temperature will cause the electrical insulation to degrade. This condition creates a significant fire hazard from arcing or shortcircuits. To insure that these hazardous situations do not occur, DOE has included provisions in the Installation Practices which effectively prohibit insulation from covering attic wires.⁶ Although DOE recognizes the severity of these constraints, there is also a need to consider the long-term problems which may arise for homeowners and consumers. Many questions remain unanswered regarding the relationship of laboratory tests to real-life situations and regarding characteristics of wiring covered by thermal insulation. DOE, NBS, CPSC, and Community Services Administration (CSA) are all embarking on research or demonstration projects in this area. The projects include:

- Laboratory studies on encapsulated wiring to determine the temperatures of encapsulated wiring under various loading conditions.
- Field studies in cooperation with various utilities to determine wiring temperatures reached and length of time the temperatures are sustained in actual homes.
- Field study of low-income homes to evaluate condition of attic wiring.
- Hot-line with fire marshalls to investigate causes and origins of electrical fires.

The timing of the research and regulations is such that results should be available prior to promulgation of the final rules. Results of the research will be included in the docket for the final rule. DOE will also take the results of this research into account in the final rule.

g. *Reflective Insulation.* Many comments on the Technical Report suggested that reflective insulation should not be recommended for use in this program. The commentators claimed that the material was less thermally efficient, more difficult to install, and less durable than the other suggested insulation materials. DOE is soliciting comments here on the desirability of retaining reflective insulation in the RCS Program.

h. *Diversified Testing Clause.* DOE is considering the inclusion of a diversified testing clause for determining whether a 15-minute finish rating is necessary for organic cellular rigid

⁶An exception is made to this provision when wiring is attached to attic joists and when there is proper over-current protection. The exception is made because the joist serves as a heat sink and dissipates heat which otherwise would result in excessive temperatures.

board materials. ASTM E119 is the test procedure generally used to determine the fire performance of these rigid board materials used in a wall system. In the test, the insulation board is covered by standard ½" gypsum board and subjected to temperature conditions specified in E-119. The gypsum board, acting as a thermal barrier, must prevent heat transmission sufficiently so that the backside of the thermal barrier is not greater than 250° F above ambient conditions for 15 minutes.

Some manufacturers and building code officials feel this test is not applicable to all rigid board materials in all situations. They feel that there are other tests and/or combinations of tests which more accurately portray the performance of the system. The following clause is therefore being considered for inclusion in the final rule in § 456.906:

Insulation board materials may be excluded from this requirement where specifically authorized by local codes or regulations based upon specific materials used in specific applications where such exclusion is based on approved diversified tests such as, but not limited to, tunnel tests in accordance with ASTM E-84 or fire tests related to the actual end-use configuration such as a corner test and an ignition temperature test. Exclusions may be based on the end-use quantity, location and similar considerations where such tests would not be applicable or practical.

Determination for inclusion will be based on the following:

- Applicability to residential retrofit.
- Availability of criteria upon which to base "approved" diversified tests.
- Impact upon other types of insulating materials used in similar applications.

DOE is aware of concern over the intended use of this clause and potential abuses of it. However, the diversified testing clause would provide compatibility with some building codes. DOE is, therefore, requesting comments on this issue:

1. *Wiring Examination.* DOE considered requiring insulation contractors to examine the condition of exposed attic wiring for fraying, cracking, or missing electrical insulation. Insulation placed over deteriorated wiring may:

- Accelerate further deterioration of the wire,
- Promote smoldering, or
- Promote possible ignition of insulation or structural members.

By incorporating the wiring provisions described in (f) above, the wiring examination no longer serves as a useful function since insulation can no longer cover attic wiring. If the test results described in (f) show that placing thermal insulation over wiring does

not cause potential safety hazards, then a requirement for a wiring examination may replace the provisions included in § 456.904(e)(6).

j. Installer Certification Card. DOE is requiring that a certification card be completed with the installation of insulation for the following reasons:

- Because insulation is installed in areas not easily visible to the homeowner, the homeowner needs some record of what was installed.

- The certification card will provide information (that may not be passed on by the present owner) to future residents of the home.

WATER HEATER INSULATION

DOE has, in this proposed Practice, prohibited the installation of insulation around gas-fired water heaters which have a flue damper attached. This determination is based on the fact that the flue damper significantly reduces the loss of heat through the flue, allowing more heat to be available for water heating. The potential for overheating of units is greatly increased by the application of additional insulation since other channels of heat-loss are eliminated. This provision does not imply that DOE is recommending flue dampers on water heaters.

REPLACEMENT OIL BURNERS

a. Replacement Criteria. DOE believes that definitive criteria are needed to determine those situations when a replacement oil burner will pay for itself over its useful life. Few homeowners are knowledgeable enough about furnace efficiency to make judgements about this investment. The replacement criteria are based on economics—as are other key elements of the program including the home energy audit. Replacement criteria are not included for other measures because, for the most part, those measures are not replacements, but additions.

b. Certification Card. Information is to be left with the installed unit similar to the certification card left by the insulation installer. Besides providing a record to the homeowner on the product installed, it will also aid any future servicemen who install the next burner by eliminating some of the guesswork necessary for the trial and error selection of the appropriate nozzle size.

c. Coordination with Residential Tax Credit. Performance criteria for a replacement oil burner under the Residential Energy Tax Credit (Title I, NECPA) may require an 82 percent steady-state efficiency when tested by the manufacturer on a new furnace. The Installation Practices contained herein require that the new burner have a steady-state efficiency of 75

percent when installed on an existing furnace or boiler. In addition, the increased efficiency of the new burner over the old burner must be sufficient to pay for the new burner over the expected life. For example, this means that if the steady-state efficiency with the existing burner is 55 percent and the steady-state efficiency with the new burner is 75 percent, the energy cost savings associated with the increased efficiency must be greater over the useful life of the replacement burner than its installed cost.

DOE does not feel these criteria are inconsistent with those in the tax credit. DOE is interested in the efficiency of the actual furnace system, not the ideal measured under laboratory conditions. In addition, DOE wants to insure that replacement oil burners are installed only when it can be demonstrated that the increased efficiency is sufficient to offset the cost of the installation.

XI. REGULATORY ANALYSIS

The President, by Executive Order 12044, has directed agencies of the Executive Branch to conduct a Regulatory Analysis of regulations which they prepare that are likely to have a major economic impact. An objective of the Regulatory Analysis is to examine alternative regulatory provisions which might permit achievement of the regulatory goals at a lower cost. The Department of Energy has expanded this objective for regulations within its jurisdiction to require analyses of the impact of regulatory alternatives on the goals of the National Energy Plan.

In keeping with these objectives, the Department of Energy (DOE) has prepared a Draft Regulatory Analysis of its proposed rules to implement Title II, Part I (the Utility Program) of the National Energy Conservation Policy Act (NECPA). The rules provide for a Residential Conservation Service (RCS) Program to promote the installation of weatherization measures, energy-saving heating system modifications and renewable resource systems in residences.

The rules implement that portion of the National Energy Plan which has as its goal the installation of insulation and other energy conservation measures in 90 percent of American homes, exclusive of those to which the new building performance standards of the Energy Conservation and Production Act (ECPA) apply. The proposed rules provide for the preparation and administration by certain utilities and home heating suppliers of programs of consumer information and residential energy conservation designed to achieve this goal. These programs must conform to the Residential Energy Conservation Plans to

be prepared by each state, the Tennessee Valley Authority and in some cases, nonregulated utilities, in accordance with the RCS Program regulations. Preparation of Residential Energy Conservation Plans by the states or the TVA, however, is voluntary.

Electric and gas utilities, both regulated and nonregulated, above a certain size (covered utilities) must prepare and administer programs irrespective of their state's decision to prepare a plan. Home heating suppliers are given the opportunity to volunteer in preparing and administering programs only if their state prepares a plan covering them.

Homeowners who improve the energy efficiency of their homes under the auspices of a covered utility or home heating supplier program conforming to RCS Program requirements will be eligible for certain consumer service benefits. Suppliers, financiers and installers of energy-conserving measures and renewable resource systems may become eligible to provide commercial services to homeowners who participate in a covered utility or home heating supplier program. To do so, they must agree to comply with certain requirements regarding the quality of the service they provide to program participants. These requirements are to be published by participating states in their Residential Energy Conservation Plans.

Separate Regulatory Analyses were conducted for the energy conservation portion of the RCS Program and the portion covering renewable resources. The two analyses are presented separately in this Summary. Sections A and B address the impacts of the energy conservation portion of the RCS Program. Section C addresses the impacts of the renewable resource portion of the program.

This Summary of the Draft Regulatory Analysis is published concurrently with the publication of the proposed rules for the RCS Program. A copy of the complete Regulatory Analysis may be obtained by contacting:

Mr. James Tanck, Director, Residential Conservation Service Program, Office of Assistant Secretary for Conservation and Solar Applications, U.S. Department of Energy, 20 Massachusetts Avenue, Washington, DC 20545, (202) 376-4708.

Public comment is invited on the content of both this Summary and the complete Draft Regulatory Analysis.

A. ALTERNATIVES

1. Provisions Having Proposed Alternatives

In developing the proposed rule, DOE selected eight provisions for which proposed alternatives could sig-

nificantly alter the impact of the program. Assessment of the impact of these alternatives is the principal focus of the Regulatory Analysis. The eight provisions cover the following regulatory content:

- (a) The required scope of the RCS Program audit;
- (b) The required scope of the energy conservation measures audit;
- (c) The required scope and duration of the requirement for post-installation inspections;
- (d) The required scope of the training required for energy auditors;
- (e) The required scope of installation standards for loosefill insulation;
- (f) The required material standard for putty;
- (g) The required material standard for glazing compound;
- (h) The required material standard for attic insulation.

2. Proposed Alternatives

For each provision either two or three alternative rule contents were proposed. The alternatives are described below.

a. The required scope of the RCS program audit

The energy conservation measures which must be included in the program energy audit offered to residential customers will be of two general types. The first type includes measures which directly conserve energy by reducing the energy required to maintain acceptable living conditions. These measures are referred to for the purposes of analysis as energy conservation measures. The second type includes those measures which conserve energy by substituting renewable energy resources for nonrenewable energy resources. These measures are referred to as renewable resource measures.

Three alternative combinations of these measures were proposed as the scope of the energy audit which a covered utility must offer to its customers under the program:

- (1) Three separate energy audits: one each for suggested energy conservation measures, solar water heating, and all other renewable resource measures;
- (2) One comprehensive energy audit which includes all categories of measures;
- (3) Two separate energy audits, one for suggested energy conservation measures plus solar water heating and one for all other renewable resource measures.

b. The required scope of the energy conservation measures audit

The energy conservation measures that must be considered in a residential energy audit will be those that are

"suggested" for each covered utility's service area. They will therefore be determined by the definition of "suggested" measures. Three alternative definitions were proposed:

- (1) All measures which pay for themselves within 6 years or less;
- (2) All measures which pay for themselves within their useful lives;
- (3) All measures listed in the legislation.

c. The required scope and duration of the post installation inspections

Three alternatives were proposed for the required scope of the post-installation inspections:

- (1) Require inspections of all furnace-related work and random inspections of 20 percent of all other installed measures;
- (2) No inspection requirement;
- (3) Require inspection of all installed measures.

Two additional alternatives were proposed regarding the duration of the requirement for post-installation inspections:

- (1) The inspections are required for the duration of the program;
- (2) After an unspecified initial period, states may, at their discretion, remove the inspection requirement.

d. The required scope of the qualification for energy auditors

Three alternatives were proposed for the qualification of energy auditors:

- (1) Require a minimum level of specialized training such as that specified by the reference program (See Section III.B. below);
- (2) Have no specialized training requirement;
- (3) Require a minimum level of specialized training but permit the states to determine its content.

e. The required scope of installation standards for loose-fill insulation

Several requirements were proposed to govern the installation of loose-fill insulation. Which of these requirements will be specified for RCS Program installations is the subject of three alternatives:

- (1) The first alternative would require the use of:
 - (a) Soffit vent baffles,
 - (b) Barriers around recessed lights,
 - (c) Minimum ventilation in attics,
 - (d) Vapor barrier on ceilings and walls in attics and bathrooms in Zone 1 only,
 - (e) Inspection for moisture damage,
 - (f) Inspection of the condition of attic wiring, and
 - (g) Wire guards.
- (2) The second alternative would require the use of (a) through (e) above;
- (3) The third alternative would require the use of (a) through (f) and include a restriction that all loose-fill in-

sulation be below the level of any wiring.

f. The required material standard for putty

Three alternative material standards were proposed for putty. They are:

- (1) Conformance to F.S. TT-P-00791B;
- (2) Commercial availability; or
- (3) Conformance to F.S. TT-P-00791B modified to allow the use of natural calcium carbonate.

g. The required material standard for glazing compound

Two alternative material standards were proposed for glazing compound. They are:

- (1) Conformance to F.S. TT-G-410E;
- (2) Commercial availability.

h. The required material standard for attic insulation

Two alternative material standards were proposed for insulation that is to be installed in open attic floors:

- (1) Critical radiant flux test and smoldering combustion test as described in F.S. HH-1-515D;
- (2) Fire hazard labeling requirement.

B. ANALYSIS OF ALTERNATIVES

1. Introduction

Choosing among alternatives is best facilitated by having available projections of the total program impacts due to each alternative. However, a special consideration arises in estimating the total program impacts when several sets of alternatives are involved and none of them are for provisions that encompass the entire rule.

The RCS provisions for which alternative rule contents were proposed are only parts of the larger body of provisions making up the entire rule. To obtain an estimate of the total program impact, the estimates for provisions that do not have alternatives proposed must be combined with estimates of the proposed alternatives for those that do.

Several of the latter provisions, i.e., those for which alternatives were proposed, have interactive effects. The impact of any alternative chosen for one affects the magnitude of the impact of an alternative chosen for another. Because of this interactive effect, the actual impact of some of these alternatives might differ from that estimated when each is assessed independently of the others.

In order to adequately capture these interactive effects, each alternative would have to be analyzed in combination with each of the other alternatives with which it might interact. In the case of the alternatives proposed for the Regulatory Analysis, however, the number of such possible combinations could be in the thousands.

Therefore, to make the analysis manageable, each provision for which alternatives were proposed was assessed individually. The effects of interaction which are necessarily omitted by this approach are not expected to be large. The results should be suitable for choosing among the alternatives proposed for each provision.

Given these considerations, a three-step approach was used to assess the impact of the total program and of each alternative. First, residential energy conservation activity in the absence of the RCS Program was projected through 1985. This baseline projection included consideration of existing federal, state and utility programs and trends.

Second, one combination of RCS Program provisions and alternatives was selected for analysis. This combination consisted of those program provisions for which alternatives were not proposed and alternative (1) in Section A above for each of the eight provisions for which alternatives were proposed. This combination of provisions and alternatives constitutes a reference program whose impact was estimated and then compared to the projected baseline in order to obtain an estimate of total program impact for one combination of alternatives. This has been termed the reference program impact estimate.

The third step in the analysis consisted of varying the alternatives, one at a time, and calculating the incremental differences from the reference program estimate. This step provided the results used in comparing the alternatives.

For some assessments, the assumptions underlying the data used permit direct estimation of the total program impact due to the alternative being assessed. For others, they do not. Therefore, the impact projections for some alternatives are reported in terms of the total program impact while for others they are reported at lower levels of aggregation. The reasons for this are explained in greater detail in the complete Regulatory Analysis. All results permit direct comparisons of the projected impacts for each alternative proposed for a provision.

The reference program estimate reported in this summary assumes that seven percent of the customers of a covered utility or home heating supplier will respond during each year of the program to the offer of an energy conservation measures audit. Seven percent is the maximum annual response rate expected for the case in which the audit is offered free of charge. This maximum likely response rate is based on the experience of a utility which offered free audits as part of a retrofit program that was similar to the proposed RCS Program.

The rate of customer response to the offer of the RCS Program audit is a key variable for any projection of the program's likely impact. In order to provide estimates of the reference program's impact for other response rates, two other cases are analyzed in the complete Regulatory Analysis. In one of these cases, a lower annual response rate of 1.5 percent is used. This rate corresponds to the actual experience of several utilities for audits costing the customer \$12. In the other, an annual response rate of 18 percent is used. This rate achieves the goal of the National Energy Plan of installing insulation or other energy conservation measures in 90 percent of existing American homes by 1985. For brevity, the results of these two additional cases are not presented in this Summary.

Another variable that is important to the analysis is the rate at which customers who have an audit follow up with the installation of energy conservation measures. Based upon the experience of a small number of utilities that have kept such records, this response rate has been assumed to be 75 percent. This follow-up installation rate was used for all three audit response rates. The effect of other programs, such as the energy tax credit, on these rates was not considered in the analysis.

All of the estimations presented in this Summary are based upon the assumed 7 percent annual audit response rate and a 75 percent follow-up installation rate. The results are presented by type of impact and sector impacted. The types of impact are: (a) Economic, (b) Energy.

The sectors impacted are: (a) National, (b) Governments, (c) Utilities, (d) Home heating suppliers, (e) Industry, (f) Households.

Two of these sectors are known to have some existing experience with residential energy conservation programs. The prior experience of state governments and utilities was taken into consideration in estimating the impact of the RCS Program on these groups. They were categorized according to three levels of prior activity in residential energy conservation programs. Estimates of impact for these groups are sometimes expressed in ranges which reflect prior level of activity.

The content of the reference program was chosen during the process of writing the proposed rules in order that the Draft Regulatory Analysis might serve as an aid in selecting the content of the proposed rules; therefore, it does not correspond precisely to the content of the rules as proposed. Consequently, the results reported for the reference program should not be interpreted as the pro-

jected impacts of the proposed rules. Rather, they reflect a set of program provisions that was selected to provide an analytical structure against which the alternatives were assessed.

Some alternatives do not produce incremental impacts for every sector. Therefore some sectors are omitted in the discussions of the alternatives.

2. Reference Program Impact Estimate

a. Economic impacts

(1) *National.* Total costs of developing and administering the five-year Residential Conservation Service Program are estimated to be \$2 billion. This estimate includes costs to governments, covered utilities and home heating suppliers of participation in the program.

Households will invest an additional \$6.7 billion in the purchase and installation of energy conservation measures. In return, they will realize an estimated gross savings in energy costs of \$30 billion over the life of the measures installed.

The maximum energy savings likely to result from the RCS Program during the first year after the program has been completed are estimated to be 0.38 Quad (1 Quad = 10^{15} Btu) or 0.2 MBD (oil-equivalent). Total energy saved over the useful lives of all measures installed will be approximately 8.2 Quad.

To the extent that these energy savings reduce the rate of growth of petroleum imports, there will be a corresponding improvement in the national balance of trade position.

The RCS Program will result in additional employment by government, utilities, home heating suppliers and industry. In general these positions will be filled by skilled or professional personnel. They include, for each year of the program:

- (a) 2,300 to 2,600 professional positions,
- (b) 2,700 to 2,800 clerical positions,
- (c) 8,600 auditors for conservation measures, and
- (d) 500 post-installation inspectors.

The impact on employment in industry has not been estimated, primarily because of a lack of reasonably reliable data. In interviews, numerous industry personnel indicated their reluctance to hire additional labor or increase production significantly for a five-year program.

(2) *Governments.* Federal governments costs will be \$21 million over the six years (FY 1979 through FY 1984) during which planning and administration of the RCS program are required. Approximately eleven additional professional staff members will be added.

State government planning and management requirements under the

program provide a number of options for the coverage and content of their Residential Energy Conservation Plans. These options include coverage of home heating suppliers and non-regulated utilities, and the choice of developing the audit procedures and training auditors or requiring the energy suppliers to perform these functions. The complete Regulatory Analysis includes estimates of state costs assuming several possible choices of content and coverage. The highest and lowest of these estimates indicate that total RCS Program costs to all states for the Years 1979 through 1984 will be in the range from \$103 to \$178 million. Because of uncertainty concerning which options would be chosen, an average cost has not been calculated.

Per capita program costs will be greater for states with small populations than for states with large populations. This is because the development of the Residential Energy Conservation Plan requires an equivalent level of effort by all states, regardless of their population characteristics. The five-year per capita impacts for large and small states under the least expensive combination of plan options are \$.07 and \$1.18 respectively. For the most expensive combination, the per capita impacts are \$.34 and \$1.98 respectively.

In the absence of federal funding, states may be required to increase revenue or cut spending in other areas to finance RCS Program activities. Spending cuts may result in reduced benefits to individuals who are affected by reductions in other state programs.

State planning and management requirements under the RCS program regulation will require an increase in professional state employment ranging from about 500 to 800 positions nationally for the years 1979 through 1984. The range corresponds to the estimates of lowest and highest plan costs discussed above. Approximately 300 additional clerical positions will also be required, resulting in total additional employment for all states between 800 and 1,100.

In addition to manpower costs, states may also be impacted by shortages of office space and equipment to accommodate the increased work force. These costs are not estimated in this regulatory analysis, but are recognized as a potential impact to some states.

Costs for enforcing compliance and reporting are included in the costs of plan development and plan management. It is assumed that the responsibilities of professional positions created by the program will be dominated by plan development and program initiation activities in 1979 and 1980. As

the program progresses, enforcing compliance and reporting take on a more dominant role.

State regulatory authorities which are designated the lead agency by the Governor will be impacted at a level equivalent to that estimated for state energy offices. In cases where the regulatory authority is not designated as the lead agency, the authority is given the opportunity to review and comment on the state plan. This review function is not anticipated to be overly burdensome.

Additionally, regulatory authorities will be required to hear rate cases resulting from requests by covered utilities to expense program costs. These rate cases may result in more complex review procedures and a heavier work load for state regulatory authorities; however, no evidence was identified to indicate that this will have a significant impact.

The RCS Program regulation includes no direct role for local governments, except in the situation where a municipally-owned nonregulated utility which meets statutory sales criteria is not included in the state plan. In this situation the nonregulated utility would be required to complete those planning and management activities which would otherwise be completed by the state. There are approximately 35 municipally-owned nonregulated utilities covered by the regulation. While this impact is significant to those municipalities directly affected, on a national scale local governments will not be affected by the RCS Program.

(3) *Utilities.* The total costs of participation of the approximately 300 utilities covered by the RCS Program is estimated to be \$1.6 billion. For a covered utility of average size (300,000 residential customers), the total costs for the five years of the program would range from about \$3 million to \$6 million depending on its prior level of activity. The average program cost for utilities is \$5.3 million because few covered utilities have extensive prior experience in residential energy conservation activity.

Included in these costs are costs of providing a two-hour audit for conservation measures only, program information, arranging of installation and/or financing, and post-installation inspections. Additional skilled and professional personnel required each year for the RCS Program by a covered utility of average size would include:

(a) Up to 15 clerical and professional positions;

(b) 10 to 30 auditors for conservation measures only; and

(c) 1 to 2 post-installation inspectors.

The variations in costs and employment requirements depend on the utility's previous experience with a resi-

dential energy conservation program, such as whether or not home energy auditors have been actively employed, etc.

A covered utility's ability to fully comply with the rules may be constrained by a lack of a sufficient number of trained auditors. This constraint would arise if the response to the auditor training program is too low to meet the demand generated by the response to the program.

Excluded from these estimates are the additional costs to the approximately thirty-five nonregulated covered utilities for the additional planning activities they would have to undertake if their state does not include them in its plan for regulated utilities. These costs have not been estimated because of the difficulty in determining how many states would exclude nonregulated utilities from their plans.

Other impacts on covered utilities include the foregone alternative uses of the funds expended for the RCS Program. Such uses might include replacing equipment and increasing plant capacity. The latter impact would be negligible, however, if energy consumption by the residential sector is significantly reduced through the RCS Program.

The foregoing explicitly considers only those costs relating to the conservation measures audit. In addition, the utility is required to offer to its residential customers an audit for renewable resource measures. Because of its more general applicability, it is possible to provide one audit specifically for solar water heating. A third audit for all other renewable resource measures would be given separately for utility customers who have had the conservation measures audit. This arrangement would be costly to the utility as well as to consumers, for three separate visits to the home could possibly be required. This would increase labor time and travel time necessary to conduct the audit, and could inconvenience the homeowner by requiring multiple visits to the home.

Time required for each of the audits has been estimated to be two hours for the conservation measures audit, one and one-half hours for the solar water heating audit, and four hours for the audit of other renewable resource measures. At an estimated cost of \$25 per audit hour, the cost of an audit package could vary from \$40 or \$50 for the solar water heating audit or the conservation measures audit to \$190 for all three audits. Additionally, auditors trained for the solar water heating and other renewable resource audits would be required by the utility.

(4) *Home Heating Suppliers.* The total cost of participation of approxi-

mately 7,600 home heating suppliers which could be covered by the RCS Program is estimated to be \$304 million. Based on an average dealer with 2,160 residential accounts, the total cost for the five years of the program per dealer would be approximately \$40,000. Additional skilled and professional personnel required each year by the average dealer would be minimal:

- (a) Less than 8 hours per week for clerical/professional staff
- (b) About 8 hours per week time auditor capability
- (c) Less than 4 hours per week for post-installation inspection staff.

The major impacts on home heating suppliers are likely to be: (a) reporting requirements, including additional paperwork and interactions with government staff, something with which the average dealer has little familiarity; and (b) possible anti-competitive effects from utility access to the customers of home heating fuel suppliers through a widely publicized and active utility program.

(5) Industry.

(a) *Energy Conservation Materials.* One of the major economic impacts will be the increased demand for energy conservation materials.

Sales of attic insulation will increase by \$590 million over what would have been purchased in the absence of the program. For storm windows, the annual demand is anticipated to rise from 35 million units per year to 61.9 million units per year during the period 1980 to 1985. Based on an average cost of \$15.80 per storm window, sales will increase from \$555 million to \$970 million.

In the market for clock thermostats, annual sales are expected to increase from \$265 million to \$340 million, based on an average per unit price of \$56. Sales of water heater jackets could increase from \$12.4 million per year to \$20.4 million per year, based on a value of \$.51 per pound of fiberglass insulation.

Demand for the automatic ignition device is not likely to be significantly stimulated by the RCS Program. An increase in demand of about two percent is anticipated.

(b) Material Standards.

(i) *Putty.* The reference program standard (F.S. TT-P-00791B) effectively prohibits the use of putty as part of the program since most manufacturers now use natural calcium carbonate in their product. However, the demand generated by the RCS Program for putty is expected to be minimal. Therefore, the economic impact of this alternative should not be significant.

(ii) *Glazing Compound.* The reference program standard (F.S. TT-G-410E) prohibits the use of several products now widely used by building

contractors as window glazing compounds. The impact of this standard will be a loss of sales for those products which are not eligible as part of the RCS Program. Because the demand generated by the RCS Program for window glazing compound is likely to be relatively small, the loss of sales due to selection of this alternative is not expected to be large.

(iii) *Attic Insulation.* The reference program standard requires that the membrane covering of any insulation to be installed in an exposed attic be tested using the critical radiant flux test as described in F.S. HH-1-515D and yield a flame spread of less than 25. Kraft-faced mineral fiber batts, a product manufactured by several firms and currently in wide use, will not pass the requirements of this test if the test is conducted with the vapor barrier exposed. In this case, the material standard for insulation to be installed in exposed attics would have a major economic impact on industry.

Industry representatives estimate that more than one-third of the attics of all new homes will be insulated with kraft-faced mineral fiber batts in 1980 and the subsequent years. Although the RCS Program does not deal with new housing construction it is highly likely that those states which adopt the regulation standard for retrofit application may extend this standard to all residential attic applications. The result would be to effectively prohibit the use of kraft-faced batts in the attics of residential buildings.

Were this to occur, a product that can reasonably be expected to fill the resulting supply void is the aluminum-faced mineral fiber batt. However, this product substitution would be likely to have a negative impact on price stability in the housing construction industry. Although aluminum-faced batts will pass the requirements of the critical radiant flux test, their cost is approximately 10 percent more than that of kraft-faced batts.

The demand for kraft-faced mineral fiber batts for attics in new residential construction is estimated to be in excess of 300 million lbs. Using \$.51 per pound as the cost of fiberglass in 1980, this represents a market value of \$135 million. The value of the replacement product (foil backed mineral fiber batts) would be \$168 million. Aluminum-faced batts can be produced on the same insulation production lines as those used for kraft-faced batts. Accordingly, there should be no change in productivity (other than that caused by the market for the higher-priced product), no major capital expenditures required and no increase in employment for the insulation manufacturers.

The foil used to make the aluminum-faced product is purchased by

the insulation industry manufacturers from aluminum manufacturers. The increase in demand for aluminum foil suitable for use with insulation would burden production lines in the aluminum industry. New capital investment would be required by the aluminum industry, and a time lag of several months would result before the higher demand levels could be satisfied. This could result in an insufficient supply of insulation for new construction.

New production jobs would be created in the aluminum industry; however, it was not determined whether existing personnel would be switched from other product lines to work on foil for insulation or if additional labor would be hired.

(c) *Installation Standards.* The reference program requirements applying to the installation of loose-fill insulation in attics will affect the cost of these installations. One requirement calls for a baffle around soffit vents to prevent the insulation from clogging them. The cost of this requirement will average \$0.02 per square foot of attic area more than the job done without such a measure. For a 1200 sq. ft. attic this amounts to \$24.00. A second requirement calls for a barrier around recessed lighting in attics to prevent insulation from covering them. The cost of this requirement will be about \$5 to \$10 per recessed light. In a home with two recessed lights this would amount to a \$10 to \$20 increase over current practices.

A third requirement calls for the placement of wire guards around any wiring that might be covered by the loose-fill insulation. It is estimated that the cost of installing wire guards will run \$.10 per sq. ft. of attic area. For a 1200 sq. ft. attic this will cost about \$120 extra.

The reference program alternative also requires that minimum ventilation openings be provided as follows:

- (i) With vapor barrier: 1 sq. ft. per 300 sq. ft. of attic space
- (ii) Without vapor barrier:
 - 1 sq. ft. per 150 sq. ft. of attic space, or
 - 1 sq. ft. per 300 sq. ft. of attic space if at least 50 percent of the ventilating area is provided by fixed ventilation at least 3 ft. above the eave or soffit vents.

For the average home the cost of this requirement will be approximately the same whether or not there is a vapor barrier. The average cost for a home with 1200 sq. ft. attic space will range from \$90 to \$180, depending on the amount of existing ventilation in the attic. It will cost about \$25 to install a paint vapor barrier as required in Zone 1 in bathrooms assuming the insulation contractor does the job.

The requirement that the installer evaluate the condition of any wiring

that might be covered by insulation is expected to have a significant impact. This is based on the opinion of a certified safety professional and underwriter with one of the larger insurance firms that it is unlikely any insurance carrier would offer liability coverage to an insulation installer who was required to conduct electrical inspections unless the installer were a licensed electrician. Therefore the services of an electrician would be required under this alternative.

The cost of having attic insulation increased from R-11 to R-30 under the requirements of the reference program alternative (excluding the vapor barrier required in Zone 1 only) have been estimated for an average home in the Washington, D.C. Such home is assumed to have 1200 sq. ft. of attic area, no attic ventilation, two recessed lights and no wire guards. The cost of a loose-fill installation under these conditions would be \$830.

The cost of such an installation in the Washington, D.C. area without these requirements is \$.40 per sq. ft., or \$480. The requirements of the reference program standard result in a 73 percent cost increase for an average installation. A cost increase of this magnitude will reduce the competitiveness of contractors participating in the program relative to those who are not. Such a cost increase is also likely to have an inflationary effect on the buildings retrofit industry.

(d) *Replacement Furnaces.* Concern has been expressed that the RCS Program will create opportunities for aggressive energy suppliers to persuade customers of other energy suppliers to switch fuels. This concern has been particularly acute where small home heating suppliers are involved.

The proposed rule contains provisions which permit states wide latitude in establishing the requirements for home heating supplier participation in the RCS Program. Given the degree of business protection inherent in this latitude, no attempt was made to estimate the impact of the program on competition between suppliers of different types of energy.

(6) *Households.* Approximately 65.4 million households are projected to be eligible to participate in the RCS Program. For the reference program it is assumed that 7 percent of the eligible households will request an energy audit under the program each year and that 75 percent of these households will follow-up and install suggested energy conservation measures. It is assumed that the measures installed will be all those that have an average payback period of six years or less and are not already installed. The choice of six years was based upon the reported experience of a small sample of utilities that have operated residen-

tial energy conservation programs. Most of these have found that consumers are reluctant to install measures having a payback period in excess of five years.

Household investments in energy conservation measures as a result of the program will be recovered through decreased energy consumption over a period of years. The approximately \$6.7 billion that will be invested in energy conservation measures will produce a gross energy cost savings to households over the useful life of the measures of \$30 billion.

The RCS Program is also likely to generate increased costs for households through: (a) Increased utility rates to cover those program costs that are passed through to customers, and (b) increased state taxes to cover the costs of developing and managing the state plans.

Increases in utility rates can result from program information costs, audit costs, arranging costs and the costs of post-installation inspections. If a state regulatory authority permits all of these program costs to be passed through to a utility's customers, the average increase in a customer's utility bill will be \$.25 per month during the lifetime of the RCS Program. This increase reflects only the costs of the program for conservation measures.

This average cost is likely to be higher for the customers of any of the thirty-five nonregulated utilities which are covered by the program but are not included in a state plan. Other variations in the impact of program costs on households are also likely. Some households serviced by more than one participating energy supplier will contribute to the support of more than one program. Certain households not covered by the program, such as tenants in apartment buildings with five or more units, may be required to absorb costs generated by the program without being eligible for program participation.

Some of the state costs of developing and administering the program may be recovered through increased state taxes. The average annual cost of participation in the program by all states is estimated to be \$27.1 million. If all of this cost is recovered through taxation, the average increase in state taxes will be about \$.28 per household per year.

The RCS Program will also result in some increases in employment which will impact a small portion of households. This employment will be generated by three sources: utilities, states, and energy conservation measures, manufacturers and installers.

b. *Energy impacts*

(1) *Energy Consumption.* Under the reference program household energy

use will decrease by approximately 0.38 Quad annually by 1985 as a result of the energy conservation measures installed under the RCS Program. This represents 2.2 percent of projected residential energy consumption by 1985, or 0.2 MBD (oil-equivalent).

(2) *Household Response to the Utility Program.* The demand for audits will fall rapidly as the price charged for audit increases from zero. With an audit provided free of charge to residential customers, the highest empirical rate experienced by a utility whose program approximated the RCS Program was an annual response rate of about seven percent. A group of utilities which conducted programs that were also similar to the RCS Program found that higher direct charges resulted in lower response rates. For energy audit charges of about \$12.00, the annual response rate was only 1.5 percent. One utility which charged \$25 for an energy audit has received an annual response rate of less than 0.25 percent. These experiences indicate that the price of the audit will have a significant effect on the response rate to the program. To the extent that providing energy audits induces households to purchase conservation measures, the impact of the program on energy savings may be significantly impacted by the cost of the audit.

3. *Impact Estimation of Alternatives for the Required Scope of the RCS Program Audit*

a. *Economic impact*

(1) *Utilities.* The reference program includes three separate audits, one for energy conservation measures, one for solar water heating, and one for other renewable resources measures. One of the alternatives to the reference audit package is to require one comprehensive audit which covers all energy conservation and renewable measures. If the demand for all three of the audits in the reference program package remained unchanged, this alternative could reduce the total cost to covered utilities of administering the audit program. Fewer trips would be required, and the total time for all three audits would be less.

Where the audit costs are charged directly to the homeowner, the total demand for audits is likely to decline because of the additional cost of the renewable resource audits. Utility costs would then decline in proportion to the lower response. Where all audit costs are expended, however, this is not likely. The demand for energy conservation audits will not be reduced by the added costs of the renewable resource audits because these added costs will not be charged to the customer requesting an audit. The one comprehensive audit will still require two auditors, one trained in conserva-

tion measures and one in renewable resource measures; therefore, the cost to the utility (and, ultimately, all the utility's customers) will rise.

The other alternative to the reference program package of three separate audits is to require that two separate audits be offered: A combined audit covering conservation measures and solar water heating, and a second audit for all other renewable resources, to be available after and contingent upon the results of the first audit. This alternative is likely to reduce the overall cost to the utility; adding solar water heating to the conservation measures audit adds only about one-half hour to the total audit time and eliminates one trip. A net one hour is saved by combining the conservation measures and solar water heating audit. This assumes that one auditor will conduct the combined audit for conservation measure and solar water heating.

(2) *Households.* If a major portion of the audit is charged to the customer requesting it, a large part of the cost shifts from all utility customers to those customers. Regarding the alternative calling for a single comprehensive audit package, the utilities' savings in costs relative to three separate audits would be passed on to those customers requesting all three audits. The total audit time would be reduced from 7½ hours to 5 hours and the cost from about \$190 to \$125, a savings of \$65 per audit.

However, when a major portion of these costs are charged directly to the customer, only customers interested in the renewable resource audit are likely to incur the cost. In this situation, the benefits of the program from this alternative are likely to be redistributed from customers who have an interest primarily in energy conservation measures to those who have a preference for renewable resource measures.

Regarding the alternative calling for two separate audits and direct charging, the cost savings for all three audits is not as great. The cost of the total package is reduced from \$190 to \$160. This alternative presents less of a disincentive to homeowners who are interested only in the energy conservation audit; however, the additional cost for the solar water heater will deter some customers that otherwise would request the energy conservation audit. Therefore, there will be redistribution of consumer benefits to those interested in renewable resources, although it will be less of a redistribution than would occur with the preceding alternative.

b. Energy impact

(1) *National and Households.* For both alternatives, in the case where the audits are fully expensed, the

energy savings will increase. There will be some customers who, in the absence of a required renewable resources audit, would not have been exposed to the benefits of renewable resource measures and therefore would not have considered installing them. Renewable resource installations by these customers will provide added energy savings.

In the case where a major portion of the audit cost is charged directly to the customer, the demand for the single comprehensive audit should be greatly reduced relative to the demand for separate audits. This will reduce the number of households participating and therefore reduce the program benefits from decreased energy consumption.

Separately charging the costs of the combined energy conservation and solar water heater audit and the other renewable resource audit will also reduce the energy savings benefits, although not as much. The energy savings from the small increase in households installing solar water heaters will partly compensate for the reduction in those installing any measures; however, this is not expected to be a major offsetting factor. An intangible benefit leading to greater future energy savings is the added exposure solar systems receive nationwide through the added solar water heater installations.

4. Impact Estimation of Alternatives for the Required Scope of the Energy Conservation Measures Audit

a. Economic impact

(1) *National.* The aggregate costs of the RCS Program increase as the required content of the conservation measures audit is expanded to include more than only those measures that pay for themselves within six years (the reference program audit content). Of the two additional alternatives proposed for the prescribed content of the conservation measures audit, one would include in the audit each energy conservation measure that pays for itself within its useful life. This alternative requires an additional 2,200 auditors each year and increases the total cost of the reference program by \$405 million.

The second alternative would include in the audit all energy conservation measures which are listed in the legislation. This alternative requires an additional 5,200 auditors nationwide each year at an increased total program cost of \$973 million.

(2) *Utilities.* The cost to a covered utility of average size increases as the required content of the conservation measures audit is increased to include more than only those measures that pay for themselves within six years

(the reference program audit content). Increasing the required content of the audit to include each energy conservation measure that pays for itself within its useful life would increase the audit time from 2 to 2½ hours. For a utility of average size this additional half hour would require from three to seven more auditors each year depending upon the utility's previous level of activity in a residential energy conservation program. The increase in costs to the utility for the five years of the program would range from \$0.6 million to \$1.3 million.

Increasing the required content of the audit to include all energy conservation measures which are listed in the legislation, would require an additional 15 auditors per utility each year. The costs to a covered utility of average size would increase by \$2.8 million over the reference program costs.

(3) *Home Heating Suppliers.* The cost per average home heating supplier increases as the content of the conservation measures audit is expanded to include more than only those measures that pay for themselves within six years (the reference program audit content). The alternative which increases the number of measures to each energy conservation measure that pays for itself within its useful life would increase the time required to audit a residence from 2 to 2½ hours. For the average fuel dealer this would require an additional two hours per week conducting audits. The increase in costs to the dealer for the five years of the program would be about \$9,500.

The alternative which includes in the audit all energy conservation measures which are listed in the legislation would require an additional four hours per week per dealer. The additional cost to the home heating supplier of this alternative over that of the reference program would be about \$18,500 during the five years of the program.

(4) *Households.* Including each measure which pays for itself within its useful life in the audit and expensing the full audit cost would increase the cost passed on to all customers of a covered utility by less than \$0.06 per month. An audit which includes all energy conservation measures listed in the legislation would increase the cost passed on to all utility customers by about \$0.14 per month.

b. Energy impact

(1) *National.* Previous experiences of utilities with audit programs indicate that homeowners are reluctant to purchase any conservation measure which has a payback period of more than six years. Therefore, the benefits in energy savings from increasing the re-

quired contents of the conservation measures audit for either alternative are likely to be minimal.

5. Impact Estimation of Alternatives for the Required Scope and Duration of the Post-Installation Inspections

a. Economic impact

(1) *National.* The reference program includes a requirement for post-installation inspection of all vent damper and intermittent ignition device installations and twenty percent of any other measures installed. One of the alternatives to this requirement is to eliminate the requirement altogether. This would reduce aggregate costs of covered utility and home heating supplier participation by \$120 million. The total program costs over the five years would decline from \$2 billion to \$1.9 billion. Aggregate employment would be affected by the elimination of the 500 full-time positions for post-installation inspectors.

The second alternative to the reference program requires that every program installation be inspected. This requirement would increase aggregate costs of covered utility and home heating supplier participation by approximately \$354 million; the total costs over the five years of the program would rise from \$2 billion to \$2.4 billion. Employment for post-installation inspectors would increase from 500 to 2,000 nationwide.

Any alternative which reduces the period of time over which post-installation inspections are required will also reduce the cost of these inspections and, therefore, the program. The maximum reduction would yield cost savings identical to those for the first alternative above, i.e., identical to the situation in which there are no inspections or cost savings of \$120 million.

(2) *Utilities.* Eliminating the reference program requirement for post-installation inspections, as in the first alternative, would reduce the five-year cost of the RCS Program for a covered utility of average size by \$350,000. The average five-year cost of the program for such a utility would decline from the reference program estimate of \$5.3 million to \$4.9 million. About 1½ full-time equivalent inspector positions would be eliminated for each covered utility.

The second alternative, which expands post-installation inspections to include every program installation, would increase the average five-year cost for a covered utility of average size by about \$1 million. The total program cost for five years for such a utility would rise from an average of \$5.3 million to nearly \$6.4 million. Under this alternative, a utility of average size would require about six inspectors or an increase of about 4½ full-time-

equivalent positions over the reference program requirement.

(3) *Home Heating Suppliers.* Eliminating the reference program requirement for post-installation inspections, as in the first alternative, would reduce the five-year costs of the program for an average home heating supplier by about \$2,000, from \$40,000 to \$38,000. The corresponding reduction in employment is negligible since the typical fuel dealer requires inspection capabilities on an occasional basis.

The second alternative, which requires that all program installations be inspected, would increase the cost of the program to an average home heating supplier by about \$5,500 over the five years of program operation. The total program cost to a dealer would therefore rise from \$40,000 to about \$45,000. The corresponding increase in employment for the average fuel dealer is insignificant; the number of inspections required would increase from 11 to 57 per year. Less than four additional man-hours per week would be sufficient to cover this increase in inspections.

(4) *Households.* Eliminating post-installation inspections would reduce the reference program cost passed on to all customers of a utility by about \$0.01 per month. At the same time, the benefits of ensuring quality workmanship would be reduced. The second alternative, to inspect all program installations, would increase the cost passed on to all customers of a utility by about \$0.05 per month.

b. Energy impact

(1) *National.* Eliminating the requirement for post-installation inspections, as in the first alternative to the reference program, might reduce the demand for services through the RCS Program because the benefit incentives available to the consumer will be correspondingly reduced. To the extent that this reduced demand for program services also reduces the demand for measures, the energy savings achievable by the program will be reduced.

Conversely, the alternative requirement that every installation under the program be inspected will make the benefit package more attractive to some households and increase the household participation rate. To the extent that this increase in participation results in an increase in the purchase of measures, a corresponding increase in energy savings would result.

Any alternative which reduces the period of time over which post-installation inspections are required will also reduce the corresponding consumer benefits of participation in the program. To the extent that homeowners choose not to install measures as a

result of this reduction in benefits, a reduction in energy savings will occur.

6. Impact Estimation of Alternatives for the Required Scope of the Qualification for Energy Auditors

a. Economic impact

Of the three alternative auditor qualification requirements proposed, the reference program utilized the alternative requiring state training in conformance with DOE requirements. The second alternative proposes that there be no requirement for specialized training of auditors. The third requires that the scope of the specialized training be determined by the states.

(1) *National.* The total cost of auditor training, assuming all states participate, of the reference program alternative for the years 1979 through 1984 is estimated to be \$6 million for plans covering regulated utilities and \$7 million for plans covering both regulated utilities and home heating suppliers. There is no cost to states under the second alternative. For the third alternative, the total costs are estimated to be \$4 million for both types of plan coverage.

(2) *States.* Total training costs were estimated for the period 1979 to 1984 for each of the options available to the states regarding the content and coverage of their Residential Energy Conservation Plans. For the purpose of comparing the alternatives, these costs were disaggregated from the total cost reported under the reference program discussion.

For the reference program alternative, the training costs per state will range from \$54,000 for a small state using the least expensive combination of program options to \$285,000 for a large state using the most expensive combination of plan options. Eliminating the training requirement, as in alternative two, would eliminate all training costs for the states.

Alternative three permits each state to establish its own training requirement. The estimated training costs per state for this alternative range from \$27,000 to \$125,000. This represents a decrease in cost from the reference program alternative of 50 percent or more for each state.

It is assumed that any state auditor qualification program will be a contract item since the RCS Program is temporary and state civil service commissions are not likely to be experienced in the area of job qualification evaluation required for the program. Therefore, these activities will not affect the number of state jobs.

(3) *Households.* Households will absorb additional costs of state program administration through either increased taxation levels, or decreases in other state services. Per capita cost figures provide an indication of the

level of this impact. The five-year cost of DOE-established training requirements ranges from \$0.03 to \$0.04 per capita.

There is no cost for the second alternative where training is not required. State training requirements will result in a five-year per capita cost ranging from \$0.01 to \$0.02. This is a decline of 50 percent or more from the per capita cost of training requirements as established by DOE.

7. Impact Estimation of Alternatives for the Required Scope of Installation Standards for Loose-Fill Insulation

a. Economic impact

(1) *Households.* The first alternative to the reference program standard specifies that all of the proposed loose-fill installation requirements except the requirements for a wire guard and wiring inspection be specified for program installations. The elimination of these requirements will reduce the cost of a reference program attic retrofit by \$120, or 14 percent. These estimates were made for an average home in the Washington, D.C. area assumed to have R-11 in the attic, no attic ventilation, 1200 square feet of attic area and two recessed lights. The assumed program installation consists of increasing the insulation value to R-30 with blown loose-fill insulation.

The second alternative to the reference program standard is the same as the first alternative with the addition of a requirement that loose-fill insulation not be installed higher than the level of any wires crossing the tops of exposed ceiling joists. The economic effect of this alternative on households is approximately the same as that of the first alternative.

(2) *Industry.* Elimination of the wire guard and wiring inspection requirements will reduce the competitive disadvantage of insulation contractors who have to charge for the extra wire guard installation and wiring inspection.

The second alternative to the reference program would limit the height to which loose-fill insulation may be installed in order to avoid surrounding attic wiring with insulation. This height limitation places a restriction on the types of loose-fill insulation which are likely to be cost-effective. For example, for the same depth of insulation, loose-fill cellulose has a much higher insulating value than does fiberglass, this will tend to make the types of loose-fill insulation that have a higher R-value per inch of depth more attractive. Since cellulose has the highest R-value per inch relative to the other types of loose-fill insulation commonly used, this alternative

will tend to bias the loose-fill market toward cellulose insulation.

Additionally, this height limitation will reduce the amount of loose-fill insulation that can be installed under the program. This may constitute a disincentive to insulation contractors to participate in the RCS Program.

8. Impact Estimation of Alternatives for the Required Material Standard for Putty

a. Economic impact

(1) *Industry.* The two alternatives to the reference program standard are to permit the use of commercially available products and to use a modified version of the existing GSA standard that would allow the use of natural calcium carbonate in place of precipitated calcium carbonate.

The alternative allowing commercially available products to be used will eliminate the very small loss of putty sales expected from the reference program putty standard.

The second alternative to the reference program putty standard permits the use of putty products that are currently in use in the building industry. Adoption of this standard will reduce the already small sales loss due to the standard used in the reference program to a negligible impact.

9. Impact Estimation of Alternatives for the Required Material Standard for Glazing Compound

a. Economic impact

(1) *Industry.* The one alternative to the reference program standard allows commercially available glazing compounds to be used. This alternative eliminates the already minor economic impact of the reference program standard.

10. Impact Estimation of Alternatives for the Required Material Standard for Attic Insulation

a. Economic impact

(1) *Industry.* The alternative to the reference program requirement of a critical radiant flux test substitutes a requirement that attic insulation carry a fire hazard warning label. Because industry currently complies with this requirement, selection of this standard will eliminate the 10 percent increase in costs and other impacts relative to existing practice that are projected for the reference program standard.

C. ECONOMIC IMPACT OF THE RENEWABLE RESOURCES COMPONENT OF THE RESIDENTIAL CONSERVATION SERVICE PROGRAM

1. Background

An assessment was performed of the macroeconomic impacts on the U.S.

economy of the solar, including wind (renewable resource), portion of the Residential Conservation Service Program, viewed as one component of the overall national solar program in the period 1980-1985. Tax credits are a complementary component of the national program.

DOE had previously published estimates of solar systems penetrations and energy displacement impacts for the combined national solar program. This was done in preparation for the Domestic Policy Review of solar energy. These DOE estimates for the Domestic Policy Review provided the basis for this economic impact assessment.

Consistent with the established DOE solar penetration estimates, only the dominant active domestic solar systems were addressed rigorously in this macroeconomic impact assessment: hot water; hot water and space heating; and a heat pump primarily for cooling and secondarily for space heating. Consistent with the DOE report for the Domestic Policy Review, passive heating and cooling systems and wind systems were not addressed rigorously; their potential impacts are expected to be small compared to the active solar measures, and were assessed in a heuristic manner.

2. Method of Assessment

National level economic impacts were assessed using the Department of Energy data concerning solar systems penetrations and the Department of Labor standard economic assessment methods. Because the national-level impacts were found to be relatively small, they were not analyzed further to assign them to specific regions of the country.

As noted, investments in residential solar systems and corresponding savings in energy demand have been estimated by DOE for 1985. These DOE established penetration estimates were used to compute changes in the levels of final demands for specific industrial sectors, on a national level, for the Bureau of Labor Statistics (BLS) economic input/output (I/O) model forecasts for 1985. This involved determining the economic content, by industrial sector, of the projected solar system sales and relating this economic activity to that projected previously by the BLS without consideration of the solar program.

The BLS I/O model was solved with the projected changes due to solar system sales, to estimate changes from the base case in national production and employment by industrial sector.

3. Overview of Findings

For the period 1976-1985, per DOE established penetration estimates, approximately 1,462,000 conventional

systems are estimated to be displaced (i.e., retrofit applications) by active solar systems, for cumulative equivalent electricity demand savings in 1985 of approximately 0.03 Quads. Use of the BLS I/O model produced estimates of a relatively small but distinctly positive impact on the national economy due to this composite national solar thrust, of which the Residential Conservation Service Program is an integral component: Total production is estimated to increase by 975-1,241 million 1963 dollars; and total employment is estimated to increase by 38-45 thousands jobs, with a modest decrease of about 1,000 jobs in the electric utilities sector.

Estimated on an aggregated national level, this production increase is on the order of 0.03 percent of Total Value Added in Manufacturing. The associated increase in total employment is on the order of 0.04 percent. Since these impacts are modest, relative to the overall economy and work force, regional allocations of the impacts were not developed.

Highlights of the sectorial changes due to the increased employment anticipated are an increase of around 21,000 jobs in the residential building construction sector and an increase of around 2,300 jobs in the heating apparatus and plumbing fixtures sector.

Without performing additional detailed analysis using the I/O model, it is difficult to quantify the potential impacts of those systems omitted from the rigorous assessment, i.e., passive and wind systems. This is especially true with regard to the inter-industry trade-offs. However, a first estimate is that the impacts will be in the same direction as those analyzed, and at the aggregate level they can be estimated by scaling the impacts from those systems addressed, based on the relative energy savings. Such scaling results in a first-order estimate of 8 to 9 thousand additional total jobs, with an additional decrease of about 200 jobs in the electric utilities sector. Again, the projected changes in the economy are positive, but modest.

D. REASONS FOR SELECTING THE PREFERRED ALTERNATIVES

1. The Required Scope of the RCS Program Audit

DOE proposes to require that the program audit consist of two parts. Each household must be offered two separate audits: One addressing energy conservation measures and the other covering renewable resource measures. Households interested in solar hot water heater audits will be able to request them in connection with the energy conservation measures audit as well as with the renewable resource measures audit. This

choice is a combination of alternatives (1) and (3).

DOE has two principal reasons for selecting this alternative. First, DOE believes that all suggested conservation measures, such as insulation and furnace improvements, must be considered by households in one audit in order to encourage investment in the most effective measures. Second, the audit alternative consisting of one comprehensive audit covering energy conservation and renewable resource measures was thought to be less effective in encouraging household interest in the audit. The cost of a comprehensive audit is likely to be significantly higher than that of the energy conservation measures audit alone. Analysis of some of the existing, limited experience with energy audit costs indicates that public response to the offer of an audit declines rapidly as its cost increases. Additional energy savings might be realized by those households that request the comprehensive audit and actually install renewable resource measures. However, these additional savings are not likely to offset the energy savings possibly lost because fewer households request the higher-cost audit.

Addition of the solar hot water heater audit as an optional item with the energy conservation audit does not necessarily increase the cost of the energy audit to an extent that public response will seriously decline. Solar hot water heaters are increasingly popular devices. Their inclusion as an option with the energy conservation audit is thought to increase the likelihood that they will be installed, yet have little detrimental effect on the response to the energy conservation audit.

2. The Required Scope of the Energy Conservation Measures Audit

DOE proposes to require that the energy conservation audit cover each energy conservation measure that is likely to pay for itself within its useful life. This alternative will increase the cost of the RCS Program to states and utilities by \$405 million.

Given the present household reluctance to invest in measures with a payback period in excess of five years, however, this increase in costs is not likely to yield a corresponding increase in energy savings. However, the alternative which specifies a lower-cost six-year payback period excludes several worthwhile measures without any economically valid reason other than household reluctance to invest for a longer period. Requiring an audit of each measure that will pay for itself within its useful life might encourage households to consider energy conservation measures that eventually will return an energy savings even if it is

not within six years. In view of the RCS Program goals, this choice of the energy conservation audit content appears reasonable.

DOE invites officials of state governments and representatives of covered utilities and the audit industry to comment on this requirement.

3. The Required Scope and Duration of the Post-Installation Inspection

DOE proposes to require that there be mandatory inspections of all installations of vent dampers, intermittent ignition systems and wind energy systems, and that there be random inspection of the installation of all other measures. The random inspections will cover:

(a) Four of the first ten installations under the program by each insulation contractor; and

(b) Twenty percent of the installations of each suggested measure done under the program, excluding those measures covered under the mandatory inspection requirements, but including installation of insulation materials.

The mandatory inspection provisions reflect DOE's recognition that the quality of the installation of vent dampers, intermittent ignition systems and wind energy systems is critical to the safety of the occupants of buildings so equipped. The requirement for random inspection of all other installations is considered necessary to ensure that contractors install measures in accordance with the installation standards of the program.

DOE does not envision its inspection program as a punitive measure, but rather as a means of promoting safe and effective installation of measures. Therefore, DOE proposes to give each state the option to reduce the twenty percent random inspection requirement provided that the state can demonstrate to DOE that the random inspections are no longer necessary to ensure safe and effective installation of suggested measures under the program.

4. The Required Scope of the Qualification for Energy Auditors

DOE proposes to require that knowledge of certain basic concepts be demonstrated in order for individuals to qualify as energy auditors. The states may determine the qualification method used to demonstrate this knowledge. This choice is equivalent to alternative (3) for this provision.

Minimum knowledge requirements include:

(a) Understanding of the national energy situation,

(b) Familiarity with residential construction,

(c) Familiarity with the measures suggested for the state in which the auditor will be working,

(d) Familiarity with energy conserving practices, and

(e) Proficiency in energy audit procedures.

With this alternative, DOE has attempted to strike a balance between the particular needs of each state and the goals of the RCS Program. On the one hand, it gives states maximum flexibility in tailoring the auditor qualification requirements to the unique conditions that exist in each state. On the other hand, establishment of a minimum knowledge requirement is intended to ensure that the auditors possess the basic skills necessary to conduct effective audits. The auditor is the first point of personal contact with the household; therefore, his or her competence in both the technical and personal aspects of the audit are crucial to the success of the program.

5. The Required Scope of Installation Standard for Loose-Fill Insulation

DOE proposes to specify as minimum requirements for an installation of loose-fill insulation those requirements listed in alternatives (1) and (3) for this provision. These requirements call for the use of:

- (a) Soffit vent baffles,
- (b) Barriers around recessed lights,
- (c) Minimum ventilation in attics,
- (d) Vapor barrier on ceilings and walls in attics and bathrooms in Zone 1 only,
- (e) Inspection for moisture damage,
- (f) Inspection of the condition of attic wiring, and either
- (g) Wire guards, or
- (h) A restriction that all loose-fill insulation be below the level of any wiring.

The choice of this alternative reflects DOE's view that trade-offs must be made between safety, effectiveness, and cost. DOE recognizes that these requirements will result in a significant increase in the cost of a loose-fill installation. The Regulatory Analysis indicates that for a home in the Washington, D.C. area having certain assumed characteristics, the requirements could increase the cost of installing loose-fill insulation by seventy-three percent.

DOE is also sensitive, however, to the long-term problems that can arise from the use of loose-fill insulation without the precautions required by this standard. These problems were given heavy weight in making the trade-offs among cost, safety, and effectiveness.

DOE is not convinced at this time that the standard as proposed is necessarily the most acceptable form of this trade-off. A large share of the added

costs is due to the requirements regarding wiring. DOE, the National Bureau of Standards, the Consumer Products Safety Commission, and the Community Service Administration are all embarking on research or demonstration projects which will help to deal with the concerns raised when insulation is installed in the vicinity of wiring. These projects include:

(a) Laboratory studies on encapsulated wiring to determine the temperatures of encapsulated wiring under various loading conditions;

(b) Field studies in cooperation with various utilities to determine wiring temperatures reached and length of time the temperatures are sustained in actual homes;

(c) Field study of low-income homes to evaluate the condition of attic wiring;

(d) Hot-line with fire marshalls to investigate causes and origins of electrical fires.

The timing of the research and regulations is such that final rules will not be issued until research results are available. Based on these results, DOE is hopeful that the wiring requirements can be relaxed in the final rules. Public comment is encouraged on this and other approaches to the cost, safety, and effectiveness trade-offs involved.

6. The Required Material Standard for Putty

DOE proposes to require the use of the GSA standard F.S. TT-P-00791B modified to allow the use of natural calcium carbonate instead of precipitated calcium carbonate. The alternative requirement that putty products be made with precipitated calcium carbonate totally precludes the use of existing putty products under the program. This restriction is considered unnecessarily stringent.

7. The Required Material Standard for Glazing Compound

DOE proposes to permit the use of any commercially available glazing compound product for installations under the program. Glazing compound is not expected to be used often in connection with program installations, and no reason was found to require a more restrictive standard.

8. The Required Material Standard for Attic Insulation

DOE proposes to require both of the proposed alternatives in its standard for attic insulation materials. The NBS-developed critical radiant flux test and smoldering combustion test are considered necessary to ensure the fire safety of these materials. The fire hazard labelling requirement is considered necessary to encourage proper in-

stallation by those who install the insulation themselves.

Questions were raised during the discussion of the critical radiant flux test concerning the adequacy of the test procedure for evaluating the fire safety of kraft-faced insulation. This paper membrane is flammable and will not pass the critical radiant flux test unless specially treated. The test procedure, however, requires that the draft paper vapor barrier be placed face down in a tray and away from the open flame. This requirement duplicates the position of insulation properly installed in an attic and the test therefore evaluates the fire danger of the insulation when properly installed. Most if not all of the kraft insulation now used will pass the test when it is carried out in this manner. However, if the attic insulation is installed improperly with the draft paper vapor barrier face up, a definite fire hazard may be created which the test, as prescribed, cannot assess. Therefore, its adequacy was questioned.

Testing the insulation with the kraft-faced vapor barrier up was considered as a solution. Serious questions were raised, however, as to the validity of testing a product in an improperly installed application. Additionally, since there is a lack of data on the incidence of such improper installations and their contribution to the spread to fire in attics, there is a question concerning the need for such a test. The test, therefore, was adopted as prescribed with the additional requirement of the fire hazard warning label. This label will alert the consumer to the fire hazard resulting from improper installation. Public comment on this choice is invited, and any information on incidents in which flame spread might have been related to the kraft membrane is solicited.

XII. ENVIRONMENTAL AND URBAN IMPACT ANALYSIS

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE is undertaking an environmental assessment of the Residential Conservation Service Program. NECPA requires DOE to issue a proposed rule 60 days following the Advance Notice of Proposed Rulemaking. Consequently, DOE is unable to complete an environmental assessment to accompany this Notice of Proposed Rulemaking. This assessment and any additional NEPA review will be completed prior to the promulgation of the final rulemaking.

This Proposed Rule has been reviewed in accordance with OMB Circular A-116 to assess the impacts on urban centers and communities. DOE has determined that the Proposed Rule is a major policy and program

initiative which requires formal urban and community impact analysis. The analysis will be incorporated into the regulatory analysis required under Executive Order 12044.

XIII. CONSULTATION WITH OTHER FEDERAL AGENCIES

In preparing this Proposed Rule, issues and options were reviewed by representatives of the Secretary of Housing and Urban Development, Federal Trade Commission, Consumer Product Safety Commission, National Bureau of Standards, and the General Services Administration.

A copy of this notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

XIV. COMMENT AND HEARING PROCEDURES

A. WRITTEN COMMENTS

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service," (Docket No. CAS-RM-79-101). Fifteen copies should be submitted. All written comments must be received by May 25, 1979, 4:30 p.m., e.d.t., to insure consideration.

The Federal Trade Commission (FTC) staff has specifically requested that the FTC be allowed an additional three weeks to submit their written comments. The reason for this request is that the FTC staff wishes to review and consider the public comments in drafting their comments with respect to competition and protecting against unfair and deceptive practices. DOE considers this a reasonable request, and, because other agencies such as the Consumer Product Safety Commission and the Environmental Protection Agency might also wish to avail themselves of this opportunity, DOE will specifically extend the written comment period for Federal agencies so requesting until June 15. These comments will be available to the public as indicated below.

All written comments received after publication of these proposed rules, whether or not submitted in accordance with these procedures, and all written comments received pursuant to the Advance Notice of Proposed Rulemaking (44 Fed. Reg. 2158, January 9, 1979), will be available for

public inspection in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. HEARING PROCEDURES

The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking, or who is a representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble and must be received before 4:30 p.m. on:

March 22 for Philadelphia Hearing
March 29 for New Orleans Hearing
April 5 for Boston Hearing
April 12 for Washington, D.C. Hearing

April 19 for St. Louis Hearing
April 26 for San Diego Hearing
May 3 for Salt Lake City Hearing

Such a request may be hand delivered to Room 2221C, 20 Massachusetts Avenue, NW., between the hours of 8:00 and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has an interest; give a concise summary of the proposed oral presentation; and provide a telephone number where he or she may be contacted through the day of the hearing.

Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of his or her participation before 4:30 p.m. on:

March 26 for Philadelphia Hearing
April 2 for New Orleans Hearing
April 9 for Boston Hearing
April 16 for Washington, D.C. Hearing

April 23 for St. Louis Hearing
April 30 for San Diego Hearing
May 7 for Salt Lake City Hearing

Each person selected to appear at the hearing must bring 15 copies of her or his statement to the hearing at

the address given to the addresses section of this preamble.

The hearings will be held beginning at 9:00 a.m., local time.

C. CONDUCT OF HEARINGS

DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

D. QUESTION AND ANSWER SESSIONS

Given the length and complexity of the Proposed Rule and in order to facilitate comments on the rules, DOE is prepared to arrange in Washington a limited number of question and answer sessions for interested persons and representatives of interested organizations in the two weeks following publication of the Proposed Rule. These sessions will not be used for soliciting or receiving comments on the rules. Rather they will be limited to DOE personnel answering questions on what the Proposed Rule provides and does not provide. Persons interested in attending such sessions should contact James R. Tanck, Director, Residential Conservation Service, (202) 376-4708, for exact dates, times, and places of the sessions. These sessions will be tape recorded, and the recordings will be available in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 of the Code of Federal Regulations, by adding a new Part 456 as set forth below.

Issued in Washington, D.C., on March 12, 1979.

OMI WALDEN,
Assistant Secretary, Conservation
and Solar Applications.

10 CFR Part 456 is amended by deleting § 456.00 and establishing new Subparts A, B, C, D, E, F, G, H, I as follows:

Subpart A—General Provisions and Definitions

Sec.

- 456.101 Purpose and Scope.
- 456.102 Petitions Concerning Conflicts of Laws.
- 456.103 Appeals.
- 456.104 List of Covered Utilities.
- 456.105 Definitions.

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

- 456.201 Scope.
- 456.202 Initial Submission.
- 456.203 Coordination Requirements.
- 456.204 Notice, Comment, and Public Hearing.
- 456.205 Procedures for Submission and Approval of State Plans.
- 456.206 Home Heating Suppliers.
- 456.207 Tennessee Valley Authority (TVA).
- 456.208 Temporary Programs.

Subpart C—Content of State Plans

- 456.301 Scope.
- 456.302 Coverage of State Plan.
- 456.303 Procedures for Investigating and Enforcing Compliance with the State Plan.
- 456.304 Exemptions and Waivers for Utility Supply, Installation, and Financing.
- 456.305 Scope of Benefits.
- 456.306 Program Announcement.
- 456.307 Requirements for Energy Audits.
- 456.308 Arranging Installation.
- 456.309 Arranging Financing.
- 456.310 Accounting and Payment of Costs.
- 456.311 Billing of Costs, Repayment of Loans, and Termination of Service.
- 456.312 List of Suppliers, Contractors, and Lenders.
- 456.313 Post-Installation Inspection.
- 456.314 Qualification Procedures for Auditors, Installers, and Inspectors.
- 456.315 Complaints Processing Procedures.
- 456.316 Coordination.
- 456.317 Home Heating Suppliers.
- 456.318 Reporting and Recordkeeping.

Subpart D—Nonregulated Utility Plans

- 456.401 Scope.
- 456.402 Coverage.
- 456.403 Initial Submission.
- 456.404 Coordination Requirements.
- 456.405 Notice, Comment, and Public Hearing.
- 456.406 Procedures for Submission and Approval of Nonregulated Utility Plans.
- 456.407 Temporary Programs.
- 456.408 Content of Plans.

Subpart E—Supply, Installation, and Financing by Utilities

- 456.501 Scope and Definitions.
- 456.502 Prohibition.
- 456.503 Exception for Certain Measures and Small Loans.
- 456.504 Exception for Existing Supply, Installation, and Financing.
- 456.505 Waivers.
- 456.506 Exception for Supply, Installation, and Financing Authorized by State Law.
- 456.507 Procedure for Obtaining Determinations and Waivers.

Subpart F—Federal Standby Authority and Enforcement Provisions

- 456.601 Scope.
- 456.602 Conditions Under Which Standby Authority Shall be Invoked.
- 456.603 Standby Authority in Lieu of State Plans.
- 456.604 Standby Authority for Nonregulated Utilities.
- 456.605 Failure to Comply With Orders.
- 456.606 Enforcement Provisions.

Subpart G—Renewable Resource Installation and Material Standards

- 456.701 Scope.
- 456.702 Solar Domestic Hot Water and Active Solar Space Heating Systems.
- 456.703 Thermosiphon Hot Water Heaters. [Reserved]
- 456.704 Passive Solar Space Heating and Cooling Systems. [Reserved]
- 456.705 Swimming Pool Heaters. [Reserved]
- 456.706 Wind Systems.

Subpart H—Energy Conservation Material Standards

- 456.801 Purpose and Applicability.
- 456.802 Definitions.
- 456.803 Standards for Loose-Fill Cellulosic or Wood Fiber Insulation.
- 456.804 Standards for Loose-Fill Mineral Fiber Insulations.
- 456.805 Standards for Mineral Fiber Blanket and Batt Thermal Insulation.
- 456.806 Standards for Vermiculite Thermal Insulation.
- 456.807 Standards for perlite Thermal Insulation.
- 456.808 Standards for Polystyrene Thermal Insulation Board.
- 456.809 Standards for Polyurethane and Polyisocyanurate Thermal Insulation Board.
- 456.810 Interim Standards for Urea-Formaldehyde Based Foam Insulation.
- 456.811 Standards for Aluminum Foil Reflective Thermal Insulation.
- 456.812 Standards for Storm Windows, Storm and Thermal Doors, Caulks and Sealants, Clock Thermostats, Water Heater and Heating/Air Conditioning Duct Insulation.
- 456.813 Standards for Aspects of Multiglazed Insulating Glass Units for Windows and Doors.
- 456.814 Standards for Furnace Efficiency Modifications.
- 456.815 Load Management Devices.

Subpart I—Energy Conservation Installation Standards

- 456.901 Scope.
- 456.902 Definitions.

- 456.903 Coverage and Additional Requirements.
- 456.904 Standard Practice for the Installation of Organic and Mineral Fiber Loose-Fill Thermal Insulation.
- 456.905 Standard Practice for the Installation of Mineral Fiber Batts and Blankets Thermal Insulation.
- 456.906 Standard Practice for the Installation of Organic Cellular Rigid Board Thermal Insulation.
- 456.907 Standard Practice for the Installation of Mineral Cellular Loose-Fill Thermal Insulation.
- 456.908 Standard Practice for the Installation of Reflective Insulation.
- 456.909 Certification Procedures for the Installation of Thermal Insulation Materials.
- 456.910 Standard Practice for the Installation of Storm Windows, Thermal Windows, Multiglazing Units and Storm Doors and Thermal Doors.
- 456.911 Standard Practice for the Installation of Clock Thermostats.
- 456.912 Standard Practice for the Installation of Insulation on Gas-Fired, Oil-Fired, and Electric Resistance Water Heaters.
- 456.913 Standard Practice for the Installation of Replacement Oil Burners for Energy Conservation.
- 456.914 Standard Practice for the Installation of Urea-Formaldehyde Foam Insulation. [Reserved]
- 456.915 Standard Practice for the Installation of Pipe Insulation. [Reserved]
- 456.916 Standard Practice for the Installation of Vent Dampers and Electric Ignition Devices. [Reserved]

Appendix A to Subpart I—ASTM and ANSI Standards.

Appendix B to Subpart I—National Electric Code Table 310-16 through 310-19.

Appendix C to Subpart I—Steady State Efficiency.

Appendix D to Subpart I—CO₂ Concentration in Flue Gas.

Appendix I to Part 456—Suggested Measures.

Appendix II to Part 456—Billing Disputes Resolution.

AUTHORITY: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. No. 95-619, 92 Stat. 3206, *et seq.*; Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565, *et seq.*, 42 U.S.C. 7101, *et seq.*

Subpart A—General Provisions and Definitions

§ 456.101 Purpose and scope.

This part contains the regulations to implement Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. No. 95-619 (references to NECPA hereinafter refer to Part 1 of Title II of the Act). NECPA requires the establishment of utility programs to encourage and facilitate the installation of energy conservation measures and renewable resource measures.

§ 456.102 Petitions concerning conflicts of laws.

(a) A utility making a petition required by a State Plan, a Nonregulat-

ed Utility Plan, or a Federal Standby Plan to determine whether the utility:

(1) Is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or Plan promulgated pursuant to NECPA, or

(2) Is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or Plan promulgated pursuant to NECPA.

Shall file the petition with the Assistant Secretary for Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20545. Any such petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(b) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(c) If the Assistant Secretary, in consultation with the Administrator of the Economic Regulatory Administration, determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or plan promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or plan promulgated pursuant to NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or plan promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this Section by such utilities.

§ 456.103 Appeals.

(a) Any person aggrieved by any order, finding, or determination made under §§ 456.102, 456.502-456.505 may appeal that order, finding, or determination in accordance with Subpart H of Part 205 of these rules.

(b) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that subpart and an order granting or denying the appeal has been issued.

§ 456.104 List of covered utilities.

(a) Before the beginning of each calendar year, the Department of Energy shall publish in the FEDERAL REGISTER a list of all covered utilities for that calendar year.

(b) Not later than 60 days after publication of the list, each State Regulatory Authority shall forward to the Secretary a copy of such list with designations as to which utilities on the list are under the jurisdiction of that Regulatory Authority.

(c) The publication of the list is for informational purposes, and the failure to include a covered utility on the list or the failure of a State Regulatory Authority to designate a utility subject to its jurisdiction in no way affects the duties of or requirements upon such covered utility under these rules or any plan promulgated pursuant to these rules.

§ 456.105 Definitions.

For purposes of this Part:

(a) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either:

(1) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceed 750 million kilowatt-hours.

(b) *Eligible Customer.* The term "eligible customer" means a person who:

(1) Owns or occupies a residential building; and

(2) Purchases fuel from a covered utility or participating home heating supplier for use in such residential building.

(c) *Energy Audit.* The term "energy audit" means an on-site inspection of a residential building to determine:

(1) The estimated cost of purchasing and installing one or more suggested measures; and

(2) The estimated savings in energy costs that are likely to result from the installation of such measure(s).

(d) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures in a residential building:

(1) *Caulking.* The term "caulking" means pliable materials used to fill small gaps at fixed joints on buildings to reduce the passage of air and moisture. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty" and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modifications" means:

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a new furnace or boiler, including a heat pump, which replaces an existing furnace or boiler using the same fuel and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue Opening Modification.* The term "flue opening modification" means an automatically operated damper (often called a vent damper) which:

(A) Is installed downstream from the draft hood in gas-fired furnaces or downstream from the barometric damper in oil-fired furnaces;

(B) Is installed on a furnace which is located in a heated part of the building; and

(C) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Electrical or Mechanical Ignition System.* The term "electrical or mechanical ignition system" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Ceiling Insulation.* The term "ceiling insulation" means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

(5) *Wall Insulation.* The term "wall insulation" means a material primarily designed to resist heat flow which is installed with or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(6) *Floor Insulation.* The term "floor insulation" means a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a build-

ing is on a ground level concrete slab, the term "floor insulation" also applies to such material installed around the perimeter of or on the slab.

(7) *Duct Insulation.* The term "duct insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

(8) *Pipe Insulation.* The term "pipe insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling pipe in an unconditioned area of a building.

(9) *Water Heater Insulation.* The term "water heater insulation" means a material primarily designed to resist heat flow which is in blanket form suitable for wrapping around the exterior surface of the water heater casing.

(10) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime windows alone.

(11) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(12) *Storm or Thermal Door.* The term "storm or thermal door" means:

(i) A second door, installed outside or inside a prime door, creating an insulating air space,

(ii) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or

(iii) A prime exterior door with a R-value of at least 2.

(13) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective or heat absorbing window or door material" means a window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

(14) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

(i) That part of a radio, ripple or other utility controlled load switching system on the customer's premises;

(ii) Clock-controlled load switching devices;

(iii) Interlocks, and other load-actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(15) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

(i) A temperature control device for interior spaces incorporating more than one temperature control level, and

(ii) A clock or other automatic mechanism for switching from one control level to another.

(16) *Energy Usage Display Meter.* The term "energy usage display meter" means a device the sole purpose of which is to display the cost (in money) of energy usage in the dwelling. It may show cost information for electricity usage, gas usage, oil usage, or any combination. The device may measure energy usage of the whole dwelling, or individual appliances or systems on an instantaneous or cumulative basis.

(e) *Energy Conserving Practices.* The term "energy conserving practices" means:

(1) *Changing Furnace and Air Conditioning Filters.* The term "changing furnace and air conditioning filters" means the replacement of disposable filters, or the cleaning of permanent filters, in forced air heating and cooling systems when the filters are sufficiently clogged with dust or lint to restrict the free flow of air through the filter.

(2) *Installing Flow Restrictor in Shower Head and Faucets.* The term "installing flow restrictor in shower heads and faucets" means placing a device in or on a shower head or faucet in order to limit the amount of water flowing through a shower head or faucet to a maximum of three gallons per minute.

(3) *Installing Low Flow Shower Heads and Faucets.* The term "installing low flow shower heads and faucets" means replacing regular shower heads or faucets with those having built-in provisions for limiting the amount of water flowing through the shower head or faucet to a maximum of three gallons per minute.

(4) *Sealing Leaks in Pipes and Ducts.* The term "sealing leaks in pipes and ducts" means the replacement of washers in leaking water valves, or the caulking of loose or poor-fitting joints in all ducts which permit the escape of conditioned air into unconditioned spaces; or the tightening, soldering, or plugging of leaking joints in hot water or steam heating pipes.

(5) *Setting Back Thermostats in Winter.* The term "setting back thermostats in winter" means manually

lowering the thermostat control setting for the furnace during the heating season to a maximum of 55 °F. during sleeping hours and at other times when no one is home.

(6) *Reducing Thermostat Setting in Winter.* The term "reducing thermostat setting in winter" means limiting the maximum thermostat control setting for the furnace to 68 °F. during the heating season.

(7) *Setting Up Thermostat in Summer.* The term "setting up thermostats in summer" means setting the thermostat control for the air conditioning to 78 °F. or higher during the cooling season and turning the air conditioning off when no one is home.

(8) *Reducing Thermostat Settings on Water Heaters.* The term "reducing thermostat settings on water heaters" means the manual setback of the water heater thermostat control setting(s) to maintain the maximum water temperature at 120° F. (140° F. for homes with automatic dishwashers).

(9) *Closing Vents, Values and Doors in infrequently Used Rooms.* The term "closing vents, valves and doors in infrequently used rooms" means keeping vacant rooms from being needlessly heated or cooled by closing or blocking air vents from the furnace or central air conditioner or closing the radiator valves leading to the vacant rooms. Where the vacant rooms have individual cold air return vents, they are also closed or blocked. Doors to vacant rooms are also closed to keep the vacant rooms isolated from the rest of the housing having heated or cooled air.

(10) Such other practices designated by the Governor which save energy, do not require the installation of measures, and have an installed cost of less than \$20.00.

(f) *Governor.* The term "Governor" means the Governor or chief executive officer of a State or his designee.

(g) *Home Heating Supplier.* The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a residential building.

(h) *Nonregulated Utility.* The term "nonregulated utility" means a public utility which is not a regulated utility.

(i) *Nonregulated Utility Plan.* The term "Nonregulated Utility Plan" means a plan developed pursuant to Subpart D of this part.

(j) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in a State Residential Conservation Service Plan which includes home heating suppliers.

(k) *Program Announcement.* The term "Program Announcement" means the document required to be sent by a covered utility or participating home heating supplier to each eligible customer by § 456.306.

(l) *Program Information.* The term "program information" means the program announcement and any information dissemination activities related to a Residential Conservation Service Program.

(m) *Program Warranty.* The term "program warranty" means a warranty which certifies that a suggested measure will have a useful life of at least three years.

(n) *Public Utility.* The term "public utility" means any person, State agency, or Federal Agency which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

(o) *Rate.* The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge or classification, and any contract pertaining to the sales of electric energy or natural gas.

(p) *Ratemaking Authority.* The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(q) *Regulated Utility.* The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(r) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a residential building:

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (r)(1) and (2) of this section.

(4) *Passive Solar Space Heating and Cooling Systems.* The term "passive solar space heating and cooling

system" means systems that make most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include:

(i) *Direct Gain Glazing Systems.* The term "direct gain glazing systems" means the use of south-facing (+ or -45° of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with moveable insulation.

(ii) *Indirect Gain Systems.* The term "indirect gain systems" means the use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

(iii) *Solaria/Sunspace Systems.* The term "solaria/sunspace systems" means a structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or -45° of True south) wall of a structure which allows for air circulation to bring heat into the residence, and which are able to be closed off from the residential structure during periods of low solar insolation.

(iv) *Thermal Pond Systems.* The term "thermal pond systems" means containers, such as tanks or water bags, filled with water or other fluids which, when placed on a roof-top, capture the sun's rays and radiates stored heat directly into the residence, and makes use of moveable insulation to regulate heat absorption and radiation.

(5) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for personal residential purposes.

(6) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means devices which are used solely for the purpose of using the sun's energy to heat swimming pool water.

(s) *Residential Building.* The term "residential building" means any building used for residential occupancy which:

(1) Is not a new building to which final standards under Sections 304(a) and 305 of the Energy Conservation and Production Act apply,

(2) Contains at least one, but no more than four, dwelling units, and

(3) Has a system for heating or cooling, or both.

(t) *Residential Conservation Service (RCS) Program.* The term "Residen-

tial Conservation Service (RCS) Program" means the program required to be implemented by covered utilities pursuant to an approved State Plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan.

(u) *Secretary.* The term "Secretary" means the Secretary of Energy.

(v) *State.* The term "State" means a State, the District of Columbia, and Puerto Rico.

(w) *State Agency.* The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(x) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency); except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(y) *State Plan.* The term "State Plan" means a plan developed pursuant to Subparts B and C of this part.

(z) *Suggested Measures.* The term "suggested measures" means those energy conservation or renewable resource measures which the Secretary has by rule determined to be appropriate by climatic region and building category and which are found in Appendix I to this part.

(aa) *Useful Life.* The term "useful life" means the period of time during which a suggested measure performs the purposes for which it was designed at a level consistent with those purposes.

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

§ 456.201 Scope.

This Subpart identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of State Residential Conservation Service Plans, hereinafter referred to as "State Plans," if a State or the TVA chooses to submit a State Plan; the procedures for approval of the State Plan by the Secretary; and the procedures for submission and criteria for approval of Temporary Programs.

§ 456.202 Initial Submission.

If a State intends to submit a State Plan, the Governor or State Agency specifically authorized by State law to submit a State Plan shall submit the following information to the Secretary:

(a) *Lead Agency.* Within 30 days of promulgation of these rules, the name and address of the State Agency, here-

inafter referred to as "Lead Agency," which has principal responsibility for the development of the State Plan. The Lead Agency shall be either:

(1) An Agency designated by the Governor to develop and submit a State Plan; or

(2) A State Agency specifically authorized by law to develop and submit a State Plan.

(b) *Nonregulated Utilities.* Within 30 days of promulgation of these rules, whether all nonregulated utilities operating in the State will be subject to the State Plan; and

(c) *Home Heating Suppliers.* Within 90 days of promulgation of these rules, whether or not any home heating suppliers will be included in the State Plan.

§ 456.203 Coordination requirements.

(a) *Among States.* The Lead Agency shall, to the extent feasible, coordinate the preparation of the State Plan with any other State which has jurisdiction over any covered utility or participating home heating supplier subject to the State Plan for the purpose of minimizing any inconsistent provisions governing such covered utility or participating home heating supplier.

(b) *Between the Lead Agency and the State Regulatory Authority.* If the Lead Agency is not the State Regulatory Authority, then the Lead Agency shall provide such Authority a copy of the proposed State Plan 30 days prior to the public hearing required by § 456.204.

§ 456.204 Notice, Comment, and Public Hearing.

Prior to submission of the State Plan to the Secretary for approval, the Governor or Lead Agency shall:

(a) *Notice and comment.* Provide meaningful public notice of the intention of the State to submit a State Plan. To be meaningful, this notice shall, at a minimum:

(1) Appear in newspapers of general circulation published in the State;

(2) Indicate where a copy of and information pertaining to the proposed State Plan can be obtained;

(3) Indicate the date, time, and location of each public hearing to be held pursuant to paragraph (b) of this section at least 30 days prior to such hearing; and

(4) Invite public comments on the content of the proposed State Plan, with at least 30 days notice.

(b) *Hearing.* Hold at least one public hearing in the State for the purpose of hearing testimony and receiving comments on the content of the proposed State Plan.

§ 456.205 Procedures for submission and approval of State plans.

(a) *Who shall submit.* Ten (10) copies of the proposed State Plan shall be submitted by either:

(1) The Governor of the State;

(2) The Lead Agency; or

(3) The TVA with respect to all covered utilities over which the TVA has ratemaking authority.

(b) *Time for submission.* The proposed State Plan shall be submitted within 180 days of promulgation of these rules. The time for submission may be extended by the Secretary if:

(1) The Governor or Lead Agency requests an extension at least 10 days prior to the formal deadline; and

(2) Good cause is shown for allowing an extension.

(c) *Approval.* (1) If a proposed State Plan meets the criteria of Subparts B and C of this Part, the Secretary shall approve it within 90 days of the date the proposed State Plan was submitted.

(2) Within 180 days after the date of approval of a State Plan, the Lead Agency shall provide to the Secretary a statement certifying whether or not all covered utilities and home heating suppliers subject to the State Plan are in compliance with the State Plan.

(3) The Lead Agency shall, within 30 days of approval of the State Plan:

(i) Inform covered utilities subject to the State Plan and participating home heating suppliers of the contents of the State Plan;

(ii) Direct such covered utilities and participating home heating suppliers to comply with the State Plan; and

(iii) Inform such covered utilities and participating home heating suppliers of the State and Federal procedures for investigating and enforcing compliance with State Plan.

(d) *Disapproval.* (1) If a proposed State Plan does not meet the criteria of Subparts B and C of this part, the Secretary shall, within 90 days of the date the proposed State Plan was submitted, disapprove the proposed State Plan in writing and shall specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Secretary may determine pursuant to the criteria of paragraph (b) of this section, the Governor or Lead Agency may submit another proposed State Plan. Except for the time in which a proposed State Plan must be submitted, all procedures of this Subpart for submission of the original proposed State Plan shall be applicable to the submission of any proposed State Plan submitted after initial disapproval.

(e) *Amendments.* (1) The Governor or Lead Agency may submit proposed amendments to an approved State Plan at any time.

(2) Except for the time in which a proposed State Plan must be submitted, all procedures of this Subpart for submission of the original State Plan shall be applicable to the submission of proposed amendments to any approved State Plan.

§ 456.206 Home heating suppliers.

If the Governor or Lead Agency submits a plan applicable to home heating suppliers in the State, it shall be a part of the State Plan and shall be submitted in accordance with the procedures of this Subpart applicable to the submission of the State Plan.

§ 456.207 Tennessee Valley Authority (TVA).

In this part, except as otherwise specified, references to the Lead Agency shall be deemed to refer also to the TVA and references to the State Plan shall be deemed to refer also to the TVA Plan. References in this Part to a State as a geographic area shall, with respect to the TVA Plan, be references to the service areas of the covered utilities subject to the TVA Plan. If the TVA chooses to submit a Residential Conservation Service Plan, it shall be subject to the following exceptions and additional requirements:

(a) *Exclusion from initial submission.* The TVA need not submit the Initial Submission as required in § 456.202. However, the TVA shall notify the Secretary within 30 days after promulgation of these rules of the person(s) in charge of its Residential Conservation Service Program.

(b) *Coordination requirement.* The TVA shall coordinate its Residential Conservation Service Plan with each State Plan developed by a State in which the utilities covered by the TVA Plan are located.

(c) *Exclusion of home heating suppliers.* The TVA Plan shall not cover home heating suppliers.

§ 456.208 Temporary programs.

(a) *Definition of temporary program.* A Temporary Program is a plan or a part of a State Plan which exempts in whole or in part for a specified period, to be determined by the Secretary, but not to exceed three years from the date of approval of such Temporary Program, one or more utilities from one or more of the following provisions:

(1) The requirements for preparing and distributing the Program Announcement described in § 456.306;

(2) The requirements for offering and performing audits described in § 456.307;

(3) The requirements for offering and arranging installation of suggested measures described in § 456.308;

(4) The requirements for offering and arranging financing for the sale or installation of suggested measures described in § 456.309;

(5) The requirement concerning accounting and payment of costs described in § 456.310;

(6) The requirements regarding billing of costs, repayment of loans, and termination of service described in § 456.311;

(7) The requirements for distributing the lists described in § 456.312(c); and

(8) The prohibition against supplying, installing, or financing by covered utilities described in § 456.502(a).

(b) *Who may submit.* A proposed Temporary Program may be submitted to the Secretary by either:

(1) The Governor of a State;

(2) A covered utility which is included in a State Plan with the support of the Governor; or

(3) A nonregulated utility not included in a State Plan.

(c) *Time for submission.* A proposed Temporary Program shall be submitted to the Secretary within 180 days of promulgation of these rules.

(d) *Approval.* (1) The Secretary shall approve or disapprove a proposed Temporary Program within 90 days of receipt of the proposed Temporary Program or later if he so notifies the person who submitted the proposed Temporary Program.

(2) The Secretary may approve a Temporary Program for a period not to exceed three years from the date of approval.

(3) Approval shall be conditioned upon periodic review by the Secretary to determine whether the grounds for approval still exist. Upon determination by the Secretary that such grounds for approval no longer exist, the Temporary Program shall be terminated.

(e) *Criteria for approval.* The Secretary shall approve a proposed Temporary Program only if the person submitting the proposed Temporary Program demonstrates to the Secretary's satisfaction that the Temporary Program:

(1) Contains adequate procedures to assure that each covered utility under such program will charge fair and reasonable prices and rates of interest to its eligible customers in connection with the purchase and installation of residential energy conservation measures;

(2) Contain adequate procedures for preventing unfair, deceptive, or anti-competitive acts or practices affecting commerce which relate to the implementation of such program;

(3) Is likely to result in the installation of all suggested measures in at least as many residential buildings as would have been installed had such

utility not been exempt from the requirements for which exemption is sought; and

(4) Contains a provision for submitting such periodic reports as the Secretary may require.

(f) *Federal Standby Authority.* The Federal Standby Authority described in Subpart F of this part shall not be exercised with respect to a covered utility which either:

(1) Is subject to an approved Temporary Program;

(2) Is proposed for inclusion under a proposed Temporary Program which has been submitted in accordance with paragraph (c) of this section, but has not yet been approved or disapproved by the Secretary; or

(3) Was subject to an approved Temporary Program which has terminated and such covered utility will be subject, within a reasonable time, to be determined by the Secretary, to an adequately implemented approved State or Nonregulated Utility Plan.

Subpart C—Content of State Plans

§ 456.301 Scope.

This subpart prescribes the minimum requirements for the content of State Plans. The State may include additional information and provide additional requirements for the Residential Conservation Service Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this Subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

§ 456.302 Coverage of State Plan.

(a) *Regulated Utilities.* All regulated utilities providing utility service in a State which meet the definition in § 456.105(a) shall be subject to the State Plan.

(b) *Nonregulated Utilities.* The State Plan shall state whether or not it covers nonregulated utilities.

(c) *Home Heating Suppliers.* The State Plan shall state whether or not it includes a Residential Conservation Service Program for home heating suppliers.

(d) *Temporary Programs.* The State Plan shall identify the covered utilities, if any, for which a request for a Temporary Program has been submitted and described or attach such program for each such utility.

§ 456.303 Procedures for Investigating and Enforcing Compliance with the State Plan.

(a) *Investigation and Enforcement.*

(1) The State Plan shall require each covered utility and each participating home heating supplier to comply with the State Plan.

(2) The State Plan shall contain adequate procedures for investigating and enforcing compliance with the State Plan by covered utilities and participating home heating suppliers.

(3) The State Plan shall cite and describe the existing or proposed State authority(ies) for such investigation and enforcement, including authorities with respect to any nonregulated utility covered in the State Plan.

(4) The State Plan shall identify the State agency(ies) responsible for such investigation and enforcement and shall include a description of the resources available for such investigation and enforcement.

(b) *Conflicts of Laws.* The State Plan shall require each covered utility to petition the Assistant Secretary for Conservation and Solar Applications in accordance with § 456.102:

(1) Whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or State Plan promulgated pursuant to NECPA; or

(2) Whenever the utility believes it is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or State Plan promulgated pursuant to NECPA.

§ 456.304 Exemptions and Waivers for Utility Supply, Installation, and Financing.

The State Plan shall:

(a) Require that each covered utility which supplies, installs, or finances any energy conservation or renewable resource measure pursuant to §§ 456.503-456.505 be listed as a supplier, installer or lender, as appropriate, pursuant to § 456.312 in the same manner and subject to the same requirements as any other supplier, installer, or lender.

(b) Contain a list of all covered utilities engaged in supplying, installing, or financing energy conservation or renewable resource measures pursuant to § 456.506(a), including with respect to each such utility a specific description of those supply, installation, or finance activities.

(c) Contain procedures specifically describing how each covered utility listed in paragraph (b) of this section will comply with the requirements of the State Plan mandated by this subpart in light of the exemption in § 456.506(b).

(d) Contain procedures to ensure that covered utilities which supply, install or finance the sale or installation of energy conservation or renewable resource measures pursuant to §§ 456.503-456.505 shall:

(1) Charge fair and reasonable prices and interest rates, which shall be determined by periodic review of com-

parative prices and interest rates by a State designated agency;

(2) Not discriminate unfairly among eligible customers; and

(3) When financing energy conservation or renewable resources measures, not discriminate unfairly among suppliers, among contractors, or among suggested measures.

§ 456.305 Scope of benefits.

(a) The State Plan shall describe what action by an eligible customer shall entitle such customer to the following benefits:

(1) The program warranty defined in § 456.105(m).

(2) Guarantee of compliance with any standard found in Subparts G, H, and I and with the listing requirements in § 456.312(b).

(3) Enforcement of standards through the inspections described in § 456.313.

(4) Billing of services as described in § 456.311; and

(5) Access to the conciliation conference described in § 456.315(a).

(b) At a minimum the above benefits shall be available to each eligible customer when a covered utility or participating home heating supplier arranges installation of any suggested measure in such customer's residence as required by § 456.308.

(c) At a minimum the benefits in Subsections (a) (4) and (5) and the benefits guaranteed by the listing requirements in § 456.312(b)(3) shall be available to each eligible customer when a covered utility or participating home heating supplier arranges financing, as required in § 456.309, for the purchase or installation of any suggested measure installed in such customer's residence.

§ 456.306 Program Announcement.

(a) *Distribution and Content.* The State Plan shall require each covered utility and each participating home heating supplier to send to each eligible customer, no later than six months after approval of the State Plan and every two years thereafter until January 1, 1985, a Program Announcement which shall:

(1) List the suggested measures for the category of residential buildings owned or occupied by such eligible customer;

(2) Include a reasonable estimate of the savings in energy costs, expressed in dollars, for a specified period of time, which are likely to result from such installation;

(3) List the energy conserving practices and state that the initial cost, if any, of each practice is less than twenty (20) dollars;

(4) Include a reasonable estimate of the savings in energy costs, expressed in dollars, for a specified period of

time, likely to result from the adoption of each practice;

(5) For each of the services required to be offered under §§ 456.307 (Energy Audits), 456.308 (Arranging Installation), 456.309 (Arranging Financing), and 456.312(c) (List Distributed to Eligible Customers):

(i) Offer and describe the service;

(ii) Explain how the eligible customer may request the service; and

(iii) List the direct cost, if any, of receiving the service;

(6) With respect to the benefits listed in § 456.305(a), describe under what circumstances such benefits may be obtained.

(7) Include the following disclosure or its equivalent:

Energy savings and installation costs depend on many factors. The estimates contained in this program announcement are based on simulations of typical houses. Your costs and savings will be different if your house is a different size or type, if you family is a different size, or if your energy using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your home.

(8) In the case of electric utilities, include, if load management devices are not suggested measures for the eligible customer, the following disclosure or its equivalent:

Electric load management devices are not suggested measures in our area. Although an investment in load management might save energy through more efficient electric energy generation, there would be no direct savings to you because we do not offer load control rates or time-of-use rates.

(9) Not include any advertising for any suggested measure or for any supplier, contractor, or lender. If the covered utility or participating home heating supplier which distributes the Program Announcement, supplies, installs or finances the sale or installation of suggested measures, the Program Announcement may so state.

(10) Not include any information regarding any product which is not an energy conservation measure, a renewable resource measure, or energy conserving practice.

(b) *Categories of Residential Buildings.* As used in this part, the term "categories" means, with respect to residential buildings, the categories listed in this subsection for each suggested measure.

(1) For each suggested energy conservation measure, the categories are:

(i) "Gas space heating", which means those residential buildings in which natural gas is the principal space heating fuel;

(ii) "Oil space heating", which means those residential buildings in which #2 heating oil, or any other fuel besides natural gas or electricity, is the principal space heating fuel;

(iii) "Electric space heating", which means those residential buildings in which electricity is the principal space heating fuel;

(2) For solar domestic hot water systems, the categories are:

(i) "Gas water heating", which includes those residential buildings in which natural gas is the principal fuel for domestic water heating;

(ii) "Oil water heating", which includes those residential buildings in which #2 heating oil, or any other fuel except natural gas or electricity, is the principal fuel for domestic water heating.

(iii) "Electric water heating", which includes those residential buildings in which electricity is the principal fuel for domestic hot water heating.

(3) For active solar space heating systems, there are nine categories, which are "gas space heating", "oil space heating", "electric space heating", with respect to the following building types:

(i) "Single-family detached", which includes any residential building which contains only one dwelling unit and which is not attached to any other residential building;

(ii) "Attached buildings", which includes any residential building which either contains more than one dwelling unit or which is attached to another residential building or both; and

(iii) "Mobile homes".

(4) For passive solar space heating and cooling systems, the category is "all residential buildings".

(5) For wind energy devices, the category is "all residential buildings".

(6) For replacement solar swimming pool heaters, the categories are:

(i) "Residential buildings with heated swimming pools"; and

(ii) "Residential buildings without heated pools".

(c) *Calculation Procedures.* The State Plan shall, with respect to the estimates of the cost and savings included in the Program Announcement:

(1) Describe the procedures by which such estimates shall be made;

(2) Require that such estimates be based on prices for fuel and suggested measures and on climate data which are representative of those for the location of each eligible customer; and

(3) Assure that:

(i) if an eligible customer receives two or more Program Announcements from different covered utilities or participating home heating suppliers, the cost and savings estimates required in paragraph (a) of this section are identical; and

(ii) Such estimates in Program Announcements distributed in different parts of the state are consistent. Consistent means identical except for variations in the characteristics of typical homes and in the price and climate

data applicable in the different parts of the State.

(d) *New Customers.* (1) The State Plan shall require that each covered utility and participating home heating supplier send a Program Announcement which meets the requirements of this section to each person who becomes an eligible customer after initial distribution of the Program Announcement but before January 1, 1985.

(2) The State Plan shall require that each new customer shall receive the Program Announcement within 60 days of becoming an eligible customer.

(3) The State Plan shall require that covered utilities and participating home heating suppliers inform each such new customer that upon request the customer may receive a copy of the results of any energy audit of the customer's residence which the covered utility or participating home heating supplier may have performed pursuant to the State Plan and require that upon such a request such utility or home heating supplier provide such results.

§ 456.307 Requirements for Energy Audits.

(a) *What Energy Audits Must Be Provided.* The State Plan shall describe the energy audit services to be offered by covered utilities and participating home heating suppliers and shall require at a minimum that each covered utility and participating home heating supplier provide to each eligible customer upon request by such eligible customer:

(1) An energy audit which addresses all energy conserving practices, all suggested energy conservation measures, and no other suggested measures except, at the discretion of the State, solar domestic hot water heating systems where they are a suggested measure; and

(2) An energy audit of each suggested renewable resource measure, which may be provided as a group or separately, as determined by the State.

(b) *Timing and Preconditions.* (1) The State Plan shall specify a reasonable time within which each covered utility and participating home heating supplier shall provide energy audits to eligible customers requesting such audits.

(2) The State Plan shall prohibit covered utilities and participating home heating suppliers from requiring as a precondition of providing an energy audit to an eligible customer that such customer purchase or perform any other method of estimating energy saving potential, including "Class B" audits as defined in the "Energy Audit Procedures" published by the Federal Energy Administration at 10 CFR 450.11.

(3) The State Plan shall prohibit covered utilities and participating home heating suppliers from discriminating unfairly among eligible customers in providing energy audits.

(c) *Results of Audit.* (1) The State Plan shall require that the auditor, in person, provide the following information in writing to each eligible customer who receives an energy audit:

(i) An estimate, which meets the requirements of paragraph (d) of this section, of the cost of hiring a contractor to install each suggested measure addressed by the energy audit in the eligible customer's residence, including materials and labor and including any site preparation or structural alterations or modifications necessary for installation of each measure;

(ii) An estimate, which meets the requirements of paragraph (d) of this section, of the savings in energy costs, expressed in dollars, which would occur over a specified time period, from installation of the suggested measures addressed by the energy audit in the eligible customer's residence;

(iii) The following disclosure or its equivalent:

The procedures used to make these estimates have been tested by the state. This testing assures that the estimates are a reasonable basis for your decision making, within the cost limitations of our program. However, the savings you actually get from installing these suggested measures may be different from the estimates contained in this audit report. Though the estimates are based on measurements of your house, they also are based on many assumptions which may not be correct for your house.

(iv) A list of the energy conserving practices which are likely to reduce energy costs for the eligible customer; and

(v) With respect to any renewable resource measure addressed by the energy audit, the following additional written information shall be provided to the customer:

(A) An estimate of the annual maintenance costs of such measure;

(B) With respect to an energy audit addressing a solar hot water system or a solar domestic space heating system, or a combination thereof, a description of the solar device used by the auditor in preparing energy savings estimates which shall include the following information:

(1) Square feet of collector;

(2) Collector characteristics, including glazing materials and other collector materials;

(3) Storage system, including the capacity of storage and the number of storage tanks;

(4) Freeze protection necessary; and

(5) The following disclosure:

The energy cost savings estimates you receive are based on systems which may be different than the ones you purchase. Also,

these estimates were not determined using actual conditions but using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur.

(C) With respect to an energy audit addressing passive solar space heating and cooling systems:

(1) The name of the particular device considered by the auditor;

(2) A description of the system and its function; and

(3) The disclosure provided in subdivision (v)(B)(5) of this subparagraph.

(D) With respect to an energy audit addressing a wind energy system, a description of the device which shall include the following information:

(1) Rated output at stated wind velocity expressed as usable power generated;

(2) Control system for the device;

(3) Braking safety;

(4) Location and height of proposed device;

(5) Proximity of device to public areas or easements which may create safety problems;

(6) Survival wind;

(7) Annual energy production in Kwhr/yr;

(8) Types of power produced: AC, DC, or cycles; and

(9) The disclosure provided in subdivision (ii)(E) of this subparagraph.

(2) The State Plan shall prohibit any covered utility from providing any estimate to any eligible customer of the cost of purchase of furnace efficiency modifications or load management devices for installation by the eligible customer.

(d) *Calculation and Audit Procedures.* (1) The State Plan shall require that the estimates of energy cost savings and of installation costs provided as a result of an energy audit shall:

(i) Be based on local fuel prices, local prices for materials and installation of suggested measures, and local climate data for the eligible customer's location;

(ii) Be based on actual measurements of the eligible customer's residence taken by the energy auditor; and

(iii) Provide clear indication to the eligible customer, through sample calculation or disclosure, that the total energy cost savings from the installation of several suggested measures will be less than the energy cost savings of each suggested measure installed individually.

(2) The State Plan shall require that any energy audit which includes an audit of an oil furnace or boiler system shall include a test of the steady-state efficiency of such furnace or boiler.

(3) The State Plan shall contain adequate procedures to:

(i) Assure that if an eligible customer receives energy audits addressing

the same suggested measures from two or more covered utilities, the results of these audits are based on the same data for fuel prices, prices for materials and installation of suggested measures, and climate; and

(ii) Assure that all methods used for determining which measurements shall be taken and which calculation procedures shall be used in all energy audits carried out under the State Plan are evaluated by the State to assure accuracy before they are implemented.

(e) *Additional Information.* The State Plan shall require that the auditor present the following information in person to each eligible customer who receives an energy audit:

(1) A description of the arrangements for installations and financing of suggested measures offered by the covered utility pursuant to the State Plan;

(2) The lists of contractors, suppliers, and lenders developed pursuant to the State Plan;

(3) An explanation of the complaint processing procedures described in § 456.315, including information on who is eligible for such procedures and how to gain access to them;

(4) A statement of the circumstances under which the DOE-approved standards for materials and installation of suggested measures apply; and

(5) A statement of the existence of the program warranties for suggested measures and the circumstances under which such warranties are required.

(f) *Prohibitions and Disclosure.* (1) The State Plan shall prohibit the auditor from estimating, as part of any energy audit provided pursuant to the State Plan, the costs or energy cost savings of installing any product which is not a suggested measure unless the auditor specifically states that such product is not a suggested measure.

(2) The State Plan shall prohibit any auditor from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any suggested measure, if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders. If a covered utility or participating home heating supplier which arranged the audit, supplies, installs or finances the sale or installation of suggested measures, the auditor may so state.

(3) The State Plan shall require that each energy auditor provide the eligible customer with a written statement of any interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any suggested measure.

(g) *Furnace Audits.* The State Plan shall require that, in order for an auditor of a covered utility or participating

home heating supplier to audit a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by the covered utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following statement:

If your home is heated by a source of fuel other than [], only the supplier of the other fuel may audit your furnace unless you specifically request an audit. Federal law requires that such a request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it, please sign below.

(h) *Qualifications for Auditors.* The State Plan shall require that each person who performs an energy audit pursuant to the State Plan shall:

(1) Be qualified according to the applicable procedures in § 456.314;

(2) Be under contract to, be an employee of, or be an employee of a contractor to a covered utility or participating home heating supplier;

§ 456.308 Arranging Installation.

The State Plan shall:

(a) Require each covered utility and participating home heating supplier to arrange installation of any suggested measure upon request by any eligible customer.

(b) Describe these arrangement services which shall, at a minimum, include a service to the eligible customer beyond the distribution of the lists required by § 456.312(c).

(c) Require each covered utility and participating home heating supplier to provide such arrangement service within a reasonable period of time, which shall be specified in the State Plan, from receipt of a request for such service.

(d) Prohibit each covered utility and participating home heating supplier, when arranging installation of suggested measures, from recommending, selecting, or providing information regarding any supplier or contractor if such recommendation, selection, or information would unfairly discriminate among suppliers and contractors of suggested measures. The State Plan may allow covered utilities or participating home heating suppliers that supply or install suggested measures to so inform the customers.

(e) Prohibit each covered utility and participating home heating supplier, when arranging installation of suggested measures, from discriminating unfairly among eligible customers, among suppliers, among contractors, or among suggested measures.

(f) Prohibit each covered utility and participating home heating supplier from arranging installation with any person not in the Master Record.

§ 456.309 Arranging Financing.

The State Plan shall:

(a) Require each covered utility and participating home heating supplier to arrange financing for the supply and installation of any suggested measure upon request by any eligible customer.

(b) Describe these arrangement services which shall, at a minimum, include a service to the eligible customer beyond the distribution of the lists required by § 456.312(c).

(c) Require each covered utility and participating home heating supplier to provide such arrangement service within a reasonable period of time, which shall be specified in the State Plan, from receipt of a request for such service.

(d) Prohibit each covered utility and participating home heating supplier, when arranging financing for the purchase or installation of suggested measures, from recommending, selecting, or providing information regarding any lender if such recommendation, selection, or information would unfairly discriminate among lenders that finance the purchase or installation of suggested measures. The State Plan may allow covered utilities or participating home heating suppliers that finance suggested measures to so inform the customer.

(e) Prohibit each covered utility and participating home heating supplier, when arranging financing of suggested measures, from discriminating unfairly among eligible customers, among suppliers, among contractors, among lenders, or among suggested measures.

(f) Prohibit each covered utility and participating home heating supplier from arranging financing with any person not in the Master Record.

§ 456.310 Accounting and Payment of Costs.

(a) *Accounting.* The State Plan shall require that covered utilities use the following accounts and procedures:

(1) All amounts expended or received by a covered utility which are attributable to the Residential Conservation Service Program, including any penalties paid under Subpart F (Federal Standby Authority) shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(2) Covered utilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) shall utilize the Uniform System of Accounts as prescribed in Title 18, CFR Parts 101, 104, 201 and 204. Covered rural electric cooperatives shall utilize the Uniform System of Accounts as prescribed by the Rural Electrification Administration (REA) in Title 7, CFR Part 1701, Appendix A. Other covered nonregulated utilities shall adopt ac-

counts within their accounting system with the attributes of the appropriate accounts prescribed by the FERC.

(i) All amounts expended by a covered utility for the Residential Conservation Service Program shall be charged to subaccounts of Account 908, Customer Assistance Expenses, its equivalent or its successor if changed by FERC or REA. Appropriate records shall be maintained thereunder so as to allow ready identification of costs attributable to the following program elements:

(A) Program Information;

(B) Energy Audit;

(ii) Billed income attributable to the Residential Conservation Service Program shall be accounted for in subaccounts within Account 456, Other Electric Revenue (for electric utilities), or Account 495, Other Gas Revenue (for gas utilities), their equivalents, or their successors if changed by FERC or REA.

(b) *Payment of Costs.* The State Plan shall require that covered utilities treat costs as described below and shall describe how the costs described in paragraph (b)(3)-(5) of this section are treated.

(1) All amounts expended by a covered utility for the Program Announcement and all public education and program promotion directly related to providing information about a utility's Residential Conservation Service Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating expenses of providing such utility service.

(2) All amounts expended by a covered utility for labor and materials in connection with the purchase or installation of any energy conservation or renewable resource measure shall be charged to the residential customer for whom such activity is performed. (Interest expenses associated with utility loans are to be treated in accordance with paragraph (b)(5) of this section.)

(3) The following program elements are to be treated as a current operating expense consistent with paragraph (b)(1) of this section or be charged to the eligible customer, consistent with paragraph (b)(2) of this section or any combination thereof. This determination shall be made by the State regulatory authority for all regulated utilities covered by the State Plan and individually by each nonregulated utility covered by the State Plan. The costs include:

(i) Administrative and general expenses associated with audits, list distribution and "arranging." These administrative costs may include, but are not limited to any costs the utility

incurs in conducting the random post-installation inspections required by § 456.313(b) and the conciliation conferences required by § 456.315(a).

(ii) Project manager requirements, including:

(A) The energy audit;

(B) Arranging for a lender to make a loan to an eligible customer to finance the purchase and installation costs of energy conservation and renewable resource measures, including repayment of the principal and interest of a loan as part of the periodic bill;

(C) Arranging to have the suggested measures installed.

(4) Costs incurred by a covered utility for services carried out by such utility on behalf of the State may be reimbursed by the State.

(5) The interest cost on a loan made by a covered utility to an eligible customer and costs, other than those in paragraph (b)(1), (2), or (3) of this section, associated with the covered utility's Residential Conservation Service Program, shall be charged to the eligible customer for whom such activity is performed. *Exception.* These items may be treated as a current expense consistent with paragraph (b)(1) of this section if the State regulatory authority, or the nonregulated utility, as appropriate, finds, after public notice and opportunity for public hearing, that the expensing of these costs is likely to result (by reason of reduction in demand for energy) in lower rates for its ratepayers than would occur if the covered utility did not treat such costs as a current expense.

(c) *Duplication of Audits.* In areas where a residential customer is an eligible customer of more than one covered utility, the State regulatory authority or the covered nonregulated utility, as appropriate, may condition the expensing of energy audits, in accordance with paragraph (b)(3) of this section, upon the establishment of procedures to ensure that each eligible customer may receive only one free or subsidized audit.

§ 456.311 Billing of costs, repayment of loans, and termination of service.

The State Plan shall require that:

(a) *Billing of Costs.* (1) Any portion of the costs of carrying out any activity pursuant to the State Plan which is charged to the eligible customer for whom such activity is performed, and is included on such customer's utility or fuel bill, shall be stated separately in such bill from the cost of providing utility or fuel service; and

(2) When any portion of the costs of carrying out any activity pursuant to the State Plan are included on a utility or fuel bill, payments received for such bill shall be first charged to pay for the purchase of utility or fuel service and only the excess shall be cred-

ited to charges for the other costs, unless the eligible customer requests an alternative distribution of payments.

(b) *Repayment of Loans.* (1) In the case of any loan made by a covered utility or a participating home heating supplier under the Residential Conservation Service Program, the covered utility or participating home heating supplier shall permit the eligible customer to repay the principal and interest of that loan as a part of his periodic utility or fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period.

(2) Under the circumstances described in the State Plan pursuant to § 456.305, an eligible customer shall be permitted to repay a loan by a lender other than the covered utility or the participating home heating supplier, as part of his periodic utility or fuel bill, if the lender agrees to repayment in such manner.

(3) In the case of any loan under the Residential Conservation Service Program which an eligible customer repays as a part of the periodic bill for utility or fuel service, if the customer notifies the utility or participating home heating supplier in writing and states why the bill is believed to contain an error, and the covered utility or participating home heating supplier receives such notification within 90 days from the mailing of any bill reflecting the alleged error, the procedures for resolving billing error disputes in appendix II of this Part shall apply.

(4) In the case of any loan made under the Residential Conservation Service Program for purchase and installation of suggested measures:

(i) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer; and

(ii) No penalty shall be imposed by the lender for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of Service.* When an eligible customer is making a payment for the purchase or installation of any suggested measure as part of such customer's periodic utility or fuel bill the covered utility or participating home heating supplier shall not terminate or otherwise restrict utility or fuel service to such customer for any default by such customer for such payments.

§ 456.312 Lists of suppliers, contractors, and lenders.

(a) *Master Record.* The State Plan shall contain procedures for the preparation of a Master Record of all suppliers, contractors, and lenders who

sell, install, or finance suggested measures in the State. These procedures shall, at a minimum:

(1) Identify the agency(ies), hereinafter referred to as the "Listing Agency," which shall be responsible for the preparation and maintenance of the Master Record. The Listing Agency shall not be a regulated utility.

(2) Attempt to inform all suppliers, contractors, and lenders who sell, install or finance suggested measures in the State of the pending compilation of the Master Record and the intended use of the Master Record, and provide them an opportunity through effective notice to apply for inclusion in the Master Record. At a minimum, the following methods of notice shall be used:

(i) Publication in newspapers of general circulation in the State; and

(ii) Direct notification of appropriate trade associations.

(3) Ensure that all persons who agree to comply with the requirements of paragraph (b) of this section, and only such persons, are included in the Master Record.

(4) Ensure that persons not included in the original or existing Master Record who meet the criteria of paragraph (b) of this section are added to the Master Record within a reasonable time after applying for inclusion.

(5) Ensure that all persons in the Master Record who fail to comply with the requirements of paragraph (b) of this section are removed from the Master Record. The State Plan shall establish the criteria by which such failure shall be grounds for removal from the Master Record. Removal procedures shall ensure that each person proposed for such removal shall have:

(i) An opportunity to file a complaint through and participate in, the redress proceeding and civil action described in § 456.315 for the purpose of protesting such removal; and

(ii) Access to the records of the Listing Agency regarding the inspections of work performed by such person.

(6) Ensure that the name and address of any supplier, contractor or lender who has been added to or deleted from the Master Record are forwarded to the appropriate covered utilities or home heating suppliers within one month of such addition or deletion.

(b) *Requirements for Inclusion in the Master Record.* (1) The State Plan shall require that, when installing suggested measures under the circumstances described by the State Plan pursuant to § 456.305, all installation contractors included in the Master Record shall:

(i) Comply with any applicable installation standards found in Subparts G and I of this part and install materi-

als which comply with any applicable standards found in Subparts G and H of this part;

(ii) Install only measures covered by the program warranty defined in § 456.105(m);

(iii) Furnish the customer with a written contract detailing the job to be performed and its cost, and certifying that any applicable State Plan requirements for installation and material standards will be compiled with;

(iv) Assure that all individuals who are employed or otherwise retained by the contractor to install vent dampers or electrical ignition systems have been qualified pursuant to the applicable provisions of §§ 456.314(c)-(e);

(v) Include in every contract a guarantee that the contractor will correct any violation of the standards in Subparts G through I of this part without cost to the customer;

(vi) Include in every contract for installation of a vent damper, electronic ignition devices, or wind energy system a guarantee to correct any violation of the standards in Subparts G-I of this part, without cost to the customer, as soon as possible after notification of any such violation by an inspector pursuant to § 456.313;

(vii) Submit a copy of all contracts for installation of suggested measures to the covered utility or participating home heating supplier; and

(viii) Agree to participate in good faith in the complaint processing procedures described in § 456.315 when there is a complaint by an eligible customer against such person.

(2) The State Plan shall require that, when supplying suggested measures or parts of suggested measures under the circumstances described by the State Plan pursuant to § 456.305, all suppliers included in the Master Record shall:

(i) Supply measures which meet any applicable standards found in Subparts G or H of this part and carry the program warranty defined in § 456.105(m) for each suggested measure or part of suggested measure which the supplier is listed as supplying; and

(ii) Prominently display, wherever they sell suggested measures or parts of suggested measures, a statement explaining that such measures meet any applicable DOE material standards and carry the program warranty defined in § 456.105(m).

(3) The State Plan shall require that, when financing the sale or installation of suggested measures under the circumstances described by the State Plan pursuant to § 456.305, all lenders included in the Master Record shall:

(i) If a periodic bill is provided, follow the procedures for resolving

billing error disputes required in § 456.311(b)(3);

(ii) Not take security in real property which is used as the principal residence of the eligible customer, unless the eligible customer acknowledges in writing that he or she is aware of the consequences of default on the loan; and

(iii) Permit a rebate of unearned finance charges if an eligible customer prepays a loan (either voluntarily or as a result of default). The amount of such rebate shall be determined by the actuarial method. Where prepayment is the result of default, the rebate shall be computed from the day of acceleration.

(4) The State Plan may include additional requirements if the Secretary determines that such requirements are fair and nondiscriminatory.

(c) *Lists Distributed to Eligible Customers.* The State Plan shall require that every covered utility and participating home heating supplier provide upon request to every eligible customer, lists of all suppliers, contractors, and lenders included in the Master Record who sell, install or finance suggested measures in their service area or such other reasonable area required by the State Plan.

(1) The State Plan shall require that these lists contain the following information in a fair, open, and nondiscriminatory manner.

(i) The name and address of each such supplier, contractor, and lender; and

(ii) An indication of which suggested measures such supplier, contractor, or lender will supply, install, or finance.

(2) The State Plan may require the lists to indicate which type of a suggested measure a supplier or contractor sells or installs. If the lists include such information for one type of a suggested measure, then it shall include such information for all types of such measure. For example, if the lists indicate who sells wooden storm windows, then they must also indicate who sells aluminum or vinyl storm windows.

(3) The State Plan shall require that these lists include in a clear and conspicuous manner the following information:

(i) A statement that the persons listed have agreed to comply with any applicable DOE standards and State Plan procedures for the sale, installation, or financing of suggested measures under the circumstances as described in the State Plan pursuant to § 456.305;

(ii) A Description of the circumstances under which such standards shall be met and such procedures shall be followed;

(iii) A description of the complaints processing procedures required by

§ 456.315 which explains who may have access to such procedures and how to gain access to such procedures; and

(iv) An invitation to all suppliers, contractors, and lenders not included on the lists to apply for inclusion;

(4) The State Plan shall prohibit any additional information from appearing on the lists unless the Secretary determines that it is not unfair, deceptive, or anticompetitive.

(5) The State Plan shall contain procedures to ensure that all covered utilities and participating home heating suppliers use the information received pursuant to paragraph (a)(6) of this section (additions to and deletions from the Master Record), when responding to specific requests of eligible customers or when arranging the sale, installation or financing of suggested measures.

(6) The State Plan shall contain procedures to ensure that these lists are updated at least every six months to add or delete the name and address of any person added to or deleted from the Master Record.

§ 456.313 Post-installation inspection.

(a) *Mandatory Inspection of All Vent Dampers, Electric Ignition Systems, and Wind Energy Systems.* The State Plan shall provide procedures for performing post-installation inspections of all vent dampers, electrical ignition systems, and wind energy systems installed under the circumstances described in the State Plan pursuant to § 456.305. These procedures shall, at a minimum, assure:

(1) That such inspection occur within one week of the installation;

(2) That the inspector performing these inspections:

(i) Meets the applicable qualifications of § 456.314; and

(ii) Has no financial interest in the contractor who installed the measure unless such contractor is a covered utility or participating home heating supplier;

(3) That such inspection examines compliance with any applicable installation standards found in Subparts G or I of this part; and

(4) That the results of such inspections are reported to:

(i) The customer, as soon as possible;

(ii) The installer, as soon as possible; and

(iii) The Listing Agency, within a reasonable time.

(b) *Random Inspection.* The State Plan shall provide procedures for performing random inspections of the suggested measures installed under the circumstances described in the State Plan pursuant to § 456.305. These procedures shall, at a minimum, assure:

(1) The performance of the following random inspections of suggested measures:

(i) For the first ten insulation installations by each insulation contractor, forty percent of such installations; and

(ii) Twenty percent of all installations of each suggested measure, excluding those installations requiring mandatory inspections described in paragraph (a) of this section but including the insulation installation described in subparagraph (1) of this paragraph. The random inspections required by this subparagraph may be reduced in number at such time as the State demonstrates to the Secretary that a twenty percent random inspection is unnecessary to ensure safe and effective installation of suggested measures under the Program.

(2) That the inspector performing these random inspections:

(i) Meets the applicable qualifications of § 456.314; and

(ii) Has no financial interest in the contractor who installed the measures.

(3) That such inspection examines compliance with any applicable installation standards found in Subparts G or I of this part.

(4) That the results of such inspections are reported within a reasonable time to:

(i) The customer;

(ii) The installer; and

(iii) The Listing Agency.

(c) The State Plan shall identify the person(s) or agency(ies) responsible for administering the procedures for post-installation inspections. Such person(s) or agency(ies) may be the Listing Agency.

§ 456.314 Qualification procedures for auditors, installers, and inspectors.

(a) *Auditors of Energy Conservation measures.* The State Plan shall contain Qualification Procedures for auditors of energy conservation measures which shall assure that each such auditor meets the following qualifications:

(1) *Energy Overview.* The auditor shall have an understanding of the current uses of energy, current sources of energy, alternative sources of energy, and the trend of increasing energy demands.

(2) *Basic Principles of Heat Flow.* The auditor shall be familiar with the three types of heat transfer and the effects of temperature and humidity on heat transfer.

(3) *Residential Construction.* The auditor shall have a general understanding of construction terminology and components.

(4) *Suggested Measures.* The auditor shall:

(i) Be familiar with the different types of each suggested energy conservation measure and with the advantages, disadvantages and applications of each;

(ii) Be familiar with the installation standards in Subpart I;

(iii) Be familiar with the types of heating fuels and systems used in the locality which the auditor will serve; and

(iv) Know how to measure flue gas temperatures and CO₂ and how to calculate the steady state efficiency of oil-fired furnaces.

(5) *Energy Conservation Practices.* The auditor shall be familiar with the energy conserving practices defined in § 456.105(e).

(6) *Auditing Skills.* The auditor shall be proficient in the pertinent auditing procedures, as prescribed by the State Plan pursuant to § 456.307, for each suggested measure the auditor will address.

(b) *Auditors of Renewable Resource Measures.* The State Plan shall contain qualification procedures for auditors of renewable resource measures which shall assure that each such auditor meets the criteria of paragraph (a) (1), (2), (3), (4)(iii), (5), and (6) of this section. In addition, the qualification procedures shall ensure that each renewable resource auditor:

(1) Is familiar with the type of suggested renewable resource measure he or she will address during each audit and with the advantages, disadvantages and application of such measure; and

(2) Is familiar with the Installation Practices in Subpart G of this part.

(c) *Installers and Inspectors of Vent Dampers in Gas-Fired Furnaces.* [Reserved.]

(d) *Installers and Inspectors of Vent Dampers in Oil-Fired Furnaces.* [Reserved.]

(e) *Installers and Inspectors of Electric Ignition Systems in Gas-Fired Furnaces.* [Reserved.]

(f) *Installers and Inspectors of Wind Energy Devices.* [Reserved.]

(g) *Quality Examiner.* The State Plan shall contain qualification procedures for quality examiners who will conduct the random inspections required by § 456.313. These procedures shall ensure that quality examiners are familiar with the installation standards contained in subparts G or I of this part as appropriate, and shall ensure the examiner's ability to examine compliance of the installation of suggested measures with the applicable installation standards.

(h) *Format of Qualifying Procedures.* Each qualification procedure shall consist of either:

(1) Training designed to instruct the individuals in the proper performance of their function(s);

(2) Tests designed to assess and certify the individuals' qualifications to

perform their functions. Such tests may include either written or practical tests as determined necessary to meet the requirements of this section;

(3) A combination of the methods identified in subparagraph (1) or (2) of this paragraph; or

(4) Any other methods which assure that individuals identified in this section meet the appropriate qualifications prescribed in this section.

(i) *Additional Requirements with respect to Qualifying Procedures.* The State Plan shall:

(1) Contain procedures which assure that persons are permitted, in a non-discriminatory manner, to participate in the qualification procedures and describe how this will be done; and

(2) Identify the timetable for initial implementation of the qualification procedures and for subsequent implementation of such procedures. Such timetable shall, at a minimum, provide for initial implementation no later than ninety (90) days following the approval of the State Plan.

§ 456.315 complaints processing procedures.

The State Plan shall contain procedures for resolving complaints which must include the following methods of complaint resolution:

(a) *Cconciliation Conference for Customer Complaints.* A conciliation conference shall be made available for the purpose of resolving complaints by eligible customers against persons who sell, install or finance the sale or installation of suggested measures under the circumstances described in the State Plan pursuant to § 456.305.

(1) The procedures described in the State Plan for conciliation conferences shall ensure that:

(i) Participation in the conciliation conference is free of cost and easily accessible to the eligible customer alleging injury;

(ii) Participation in the conciliation conference by the eligible customer alleging injury is voluntary; and

(iii) The conciliation conference is presided over by an impartial conciliator who has no financial interest in any party involved in the complaint or in the outcome of the proceeding.

(2) The State Plan shall identify the person(s) or agency(ies) responsible for administering the procedures for the conciliation conference.

(b) *Redress Proceeding.* A redress proceeding shall be made available to all persons alleging injury arising from an activity carried out under the State Plan or from a violation of the State Plan.

(1) The procedures described in the State Plan for redress proceedings shall ensure that:

(i) The redress proceeding is easily accessible to all persons alleging an

injury under the Program or a violation of the State Plan;

(ii) The redress proceeding is available to an eligible customer whether or not the eligible customer has participated in the conciliation conference described in paragraph (a) of this section;

(iii) All persons who have a substantial interest in the outcome of a redress proceeding are given timely and adequate notice of the proceeding and have an opportunity to participate in the proceeding;

(iv) The cost of access to and participation in the redress proceeding is kept at a minimum;

(v) The redress proceeding is held within a reasonable time after the initial complaint has been filed;

(vi) The redress proceeding is held before an impartial deciding official who has no financial interest in any party to the complaint or in the outcome of the proceeding;

(vii) Formal rules of evidence are not required;

(viii) The deciding official delivers a written decision and a brief statement of reasons for coming to the decision within a reasonable time after the date of the proceeding;

(ix) The decision is enforceable under State law; and

(x) The decision and statement of reasons is sent to the Lead Agency within a reasonable time.

(2) The State Plan shall identify the person(s) or agency(ies) responsible for administering the procedures for the redress proceeding. Such person(s) or agency(ies) may be a State court if the requirements of this Subsection are met.

(c) *Civil Action.* A right of action in a State Court shall be made available for persons seeking recovery of damages for an injury arising from an activity carried out under the State Plan or from a violation of a State Plan. The State Plan shall cite the existing or proposed State law which gives a State court or courts jurisdiction over such civil actions.

§ 456.316 Coordination.

(a) *Other programs.* The State Plan shall provide procedures to ensure effective coordination between its residential Conservation Service Program as described in the State Plan and all local, State, and Federal energy conservation programs within and affecting the State which shall include, but not be limited to:

(1) Federal Energy Extension Service;

(2) Basic State Energy Conservation Program of the Department of Energy;

(3) Supplemental State Energy Conservation Program of the Department of Energy; and

(4) Weatherization Assistance Program for Low Income Persons.

(b) *Energy Suppliers.* If the State Plan permits coordination of Residential Conservation Service Programs among energy suppliers in the State, then it shall provide procedures describing how such coordination may occur and ensuring that no collusion on prices charged to eligible customers will occur.

(c) *State Regulatory Authority.* If the lead Agency is not the State Regulatory authority, then the State Plan shall describe how the Lead Agency shall coordinate the implementation of the State plan with the State Regulatory Authority.

§ 456.317 Home heating suppliers.

(a) *Consideration of Limited Resources.* If a State Plan covers home heating suppliers, it shall, within the terms of the requirements of this Subpart, take into account the limited resources of small home heating suppliers.

(b) *Participation and Withdrawal.* The State Plan shall include a procedure by which the Governor shall allow a home heating supplier to participate in its Residential Conservation Service Program. The State Plan shall also provide for the voluntary withdrawal of participating home heating suppliers from its Residential Conservation Service Program.

(c) *Waiver of Requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating home heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall not waive for any home heating supplier who chooses to participate in the program are those established according to:

(1) Section 456.303 (Procedures for Investigating and Enforcing Compliance with the State Plan);

(2) Section 456.305 (Scope of Benefits), in that any benefit to which any eligible customer is entitled by receiving a service from a covered utility must also be available to any eligible customer who receives the same service from a participating home heating supplier;

(3) Section 456.306(c) (Calculation Procedures for the Program Announcement), if the participating home heating supplier provides a Program Announcement to its eligible customers;

(4) Section 456.307(d)(3) (Consistency of Auditing Procedures), if a participating home heating supplier performs energy audits for its eligible customers;

(5) Those sections which prohibit anticompetitive activities or unfair discrimination by covered utilities or participating home heating suppliers, which are:

(i) Sections 456.306(a) (9) and (10) (Information Prohibited from the Program Announcement);

(ii) Section 456.307(b)(3) (Discrimination Among Customers in Providing Energy Audits);

(iii) Section 456.307(f) (Prohibitions in Auditing);

(iv) Section 456.307(g) (Furnace Audits);

(v) Section 456.308(e) (Prohibitions of Discrimination in Arranging Installation);

(vi) Section 456.309(e) (Prohibitions of Discrimination in Arranging Financing);

(vii) Sections 456.312(c) (1)-(4) (Content of Lists).

(6) The following reporting and recordkeeping requirements:

(i) Section 456.318(a)(1);

(ii) Section 456.318(a)(5), except that the Governor may waive § 456.318(a)(5)(vi) concerning the accounting of program costs; and

(iii) Section 456.318(b) (Recordkeeping).

§ 456.318 Reporting and Recordkeeping.

(a) *Reporting.* The State Plan shall contain provisions to assure that a report is submitted to the Secretary on July 1, 1981 and annually thereafter through July 1, 1986, which contains the following information for the twelve-month period ending the preceding April 1:

(1) A list of all covered utilities and participating home heating suppliers subject to the State Plan;

(2) A list of all covered utilities and participating home heating suppliers subject to the State Plan engaged in supplying, installing, or financing energy conservation measures pursuant to § 456.503 (Exception for Certain Measures and Small Loans) of these rules, and a description with respect to each utility of the nature of the exempted activity in which it is engaged;

(3) A list of all covered utilities subject to the State Plan engaged in supplying, installing, or financing energy conservation or renewable resource measures pursuant to § 456.504 (Exception for Existing Supply, Installation and financing) and a description with respect to each utility of the nature of the exempted activity in which it is engaged;

(4) A list of all covered utilities subject to the State Plan which are either

engaged in supplying, installing, or financing energy conservation or renewable resource measures pursuant to a waiver granted by the Office of Hearings and Appeals under § 456.505 (Waivers), or which are petitioning for such a waiver;

(5) For each covered utility or participating home heating supplier:

(i) The average number of eligible customers;

(ii) The number of Program Announcements distributed to eligible customers;

(iii) A description of the services which the covered utility or participating home heating supplier offers under the State Plan;

(iv) The number of eligible customers who have requested each service and the number of requests the utility or participating home heating supplier has fulfilled, including:

(A) The number of energy audits performed;

(B) The number of installations of each suggested measure arranged by the covered utility of participating home heating supplier and the total cost of such installations;

(C) The number of loans the covered utility or participating home heating supplier has arranged;

(D) The number of customers who are repaying loans as part of their periodic bills, and the average size of such loans;

(E) The number of lists of suppliers, contractors, and lenders which the covered utility or participating home heating supplier has distributed;

(F) The number of installation, if any, of suggested measures which the covered utility or participating home heating supplier supplied, installed, or financed;

(v) The number and function of people assigned to the covered utility's or participating home heating supplier's program, including part-time employees; and

(vi) The cost of providing each service under the Residential Conservation Service Program including separately those costs paid by individual customers for services received and those costs paid by all customers as part of rates for energy.

(6) The number and nature of complaints by eligible customers against suppliers, contractors, and lenders which have been handled through the conciliation conference established under § 456.315(a);

(7) The number of persons seeking redress through the procedures described in § 456.315(b), and the nature of their allegations;

(8) The number of people who are qualified under the procedures required by § 456.314 to perform energy conservation audits, renewable resource audits, audits of furnace equip-

ment, and installation of furnace equipment;

(9) The number of persons added to or removed from the Master Record established according to § 456.312, and the reasons for removal of firms;

(10) The number and findings of post-installation inspections conducted according to § 456.313;

(11) The number and function of State employees assigned to the Residential Conservation Service Program, including part-time employees;

(12) The cost of the Residential Conservation Service Program to the State, including all costs fully or partially paid by eligible customers; and

(13) In the first such annual report, the status of any proposed State or local legislation relevant to the State Plan.

(b) *Recordkeeping.* The State Plan shall contain procedures to assure that the following records are kept for the periods indicated and made available to the Secretary upon request:

(1) The name and address of each eligible customer who requests an energy audit, which shall be kept for five years;

(2) A copy of the data collected during the audit, and a copy of the estimates of costs and savings presented to the customer, which shall be kept for five years;

(3) A copy of all requests by eligible customers for furnace audits which are required by § 456.307(g), which shall be kept for five years;

(4) The name and address of each eligible customer for whom a covered utility or participating home heating supplier arranges installation or financing of a suggested measure, which shall be kept for five years;

(5) A copy of each contract for installation of any suggested measure arranged by a covered utility or participating home heating supplier, which shall be kept for five years;

(6) The amount and cost of fuel purchased each month or other billing period for each eligible customer, which shall be kept for two years; and

(7) The names of the individuals who have met the qualification criteria described in § 456.314. These records shall be:

(i) Updated within a reasonable period of time following each implementation of the qualification procedures, and

(ii) Maintained separately with respect to the records of installers and inspectors of vent dampers, electronic ignition devices and wind energy systems.

Subpart D—Nonregulated Utility Plans

§ 456.401 Scope.

This subpart identifies the responsibilities of covered nonregulated utilities not subject to a State Plan for the

preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Secretary, and the minimum requirements for the content of Nonregulated Utility Plans.

§ 456.402 Coverage.

This subpart shall apply to all nonregulated covered utilities which are not covered by a State Plan.

§ 456.403 Initial submission.

Each utility subject to this subpart shall notify the Secretary, within 60 days after promulgation of these rules, of the person responsible for the preparation of its Nonregulated Utility Plan.

§ 456.404 Coordination requirements.

Each utility subject to this subpart shall, to the extent feasible, coordinate the preparation of its Nonregulated Utility Plan with the preparation of the applicable State Plan for the purpose of minimizing inconsistent provisions between the two plans.

§ 456.405 Notice, comment, and public hearing.

Prior to submission of the Nonregulated Utility Plan to the Secretary for approval, the nonregulated utility shall:

(a) *Notice and Comment.* Provide meaningful public notice of the requirement for the nonregulated utility to submit a Nonregulated Utility Plan. To be meaningful, this notice shall, at a minimum:

(1) Appear in newspapers of general circulation published in the nonregulated utility's service area;

(2) Indicate where a copy of the proposed Nonregulated Utility Plan can be obtained and where questions concerning the Plan can be answered;

(3) Indicate the date, time, and location of each public hearing to be held pursuant to § 456.405(b) with at least 30 days notice; and

(4) Invite public comments on the content of the proposed Nonregulated Utility Plan, at least 30 days prior to the final date for receiving such comments.

(b) *Hearing.* Hold at least one public hearing in the nonregulated utility's service area for the purpose of hearing testimony and receiving comments on the content of the proposed Nonregulated Utility Plan.

§ 456.406 Procedures for submission and approval of Nonregulated Utility Plans.

(a) *Submission.* Each utility subject to this Subpart shall submit within 180 days of promulgation of these rules a proposed Nonregulated Utility Plan. The time for submission may be extended by the Secretary if:

(1) The nonregulated utility requests an extension at least 10 days prior to the formal deadline; and

(2) Good cause is shown for allowing an extension.

(b) *Approval.* (1) If a proposed Nonregulated Utility Plan meets the criteria of this subpart, the Secretary shall approve it within 90 days of the date the proposed Nonregulated Utility Plan was submitted.

(2) Within 180 days after the approval of the Nonregulated Utility Plan, the nonregulated utility shall provide to the Secretary a statement certifying whether it is in compliance with its Nonregulated Utility Plan.

(c) *Disapproval.* (1) If a Nonregulated Utility Plan does not meet the criteria of this Subpart, the Secretary shall, within 90 days of the date the proposed Nonregulated Utility Plan was submitted, disapprove the proposed Nonregulated Utility Plan and specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Secretary may determine pursuant to the criteria of paragraph (a) of this section, the nonregulated utility shall submit another proposed Nonregulated Utility Plan. The procedures of this subpart for submission of the original proposed Nonregulated Utility Plan shall be applicable to the submission of any proposed Nonregulated Utility Plan submitted after initial disapproval, except for the 60 days requirement of this paragraph.

(d) *Amendments.* (1) The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time.

(2) Except in the time in which a proposed plan must be submitted, the procedures of this Subpart for submission of the original Nonregulated Utility Plan shall be applicable to the submission of proposed amendments to an approved Nonregulated Utility Plan.

§ 456.407 Temporary programs.

A nonregulated utility may submit a temporary program as defined in § 456.208(a) in accordance with the procedures and criteria of § 456.208. This submittal may be a part of the proposed Nonregulated Utility Plan or a separate submittal.

§ 456.408 Content of plans.

(a) *General requirements.* (1) Except as provided in this section, each Nonregulated Utility Plan shall meet all the requirements for State Plans in Subpart C of this part.

(2) Except as otherwise provided in this section, all references in Subpart C of this part to:

(i) Covered utilities shall be deemed to refer to utilities subject to this Subpart;

(ii) A State Plan shall be deemed to refer to a Nonregulated Utility Plan;

(iii) Participating home heating suppliers shall not apply;

(iv) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency of officer shall be deemed to refer to the nonregulated utility submitting the Plan; and

(v) A State (as a geographic area) shall be deemed to refer to the nonregulated utility's service area.

(b) *Program Announcement.* A Nonregulated Utility Plan need not contain a provision comparable to that required for State Plans in § 456.306(c)(3)(i): *Provided*, That the nonregulated utility shall coordinate with the State Lead Agency to minimize inconsistencies with respect to the estimates of costs and savings contained in Program Announcements distributed by the nonregulated utility and those distributed by utilities subject to the State Plan in the same area.

(c) *Energy Audit.* A Nonregulated Utility Plan need not contain a provision comparable to that required for State Plans in § 456.307(d)(3)(i): *Provided*, That the nonregulated utility shall coordinate with the State Lead Agency to minimize inconsistencies between data used by the nonregulated utility in the audit calculations and the data used in audit calculations by utilities subject to the State Plan in the same area.

(d) *Quality Examiner Financial Interest.* Where a nonregulated utility installs suggested measures, the prohibition in § 456.313(b)(2)(ii) against quality examiners having any financial interest in the installing contractor shall not apply with respect to installations made by the nonregulated utility.

(e) *Complaint Processing Procedures.* The requirements of §§ 456.315(b)(1)(ix) and 456.315(c) are not applicable to Nonregulated Utility Plans.

(f) *Coordination and Home Heating Supplies.* The requirements of §§ 456.316(b) and (c) and 456.317 are not applicable to Nonregulated Utility Plans.

(g) *Reporting Requirements.* The requirements of § 456.318(a)(1)-(4) are not applicable to Nonregulated Utility Plans.

(h) *Utilizing State Plans.* (1) In a State submitting a State Plan, a nonregulated utility may by written understanding with the appropriate State agency incorporate by reference in its Nonregulated Utility Plan those parts of the State Plan required by:

(i) Section 456.306(c);

- (ii) Section 456.307(c);
- (iii) Section 456.307(d);
- (iv) Section 456.312;
- (v) Section 456.313(a);
- (vi) Section 456.313(b);
- (vii) Section 456.314; or
- (viii) Section 456.315.

(2) If a Nonregulated Utility Plan incorporates provisions in a State Plan by reference as permitted by paragraph (h)(1) of this Section, all references in those provisions to utilities subject to the State Plan shall be deemed to refer to the nonregulated utility.

(3) If a Nonregulated Utility Plan uses a State produced Master Record, the nonregulated utility may not add or delete contractors, suppliers, or lenders from that Master Record or add or delete contractors, suppliers, or lenders from any list distributed, except in accordance with the State Plan.

Subpart E—Supply, Installation, and Financing by Utilities

§ 456.501 Scope and definitions.

(a) This Subpart contains the prohibition against a covered utility's supply, installation, and financing of energy conservation and renewable resource measures. It also specifies the exceptions to this prohibition and the procedures, where applicable, for obtaining those exceptions.

(b) For purposes of this subpart:

(1) A utility "installs" a measure whenever the contract for installation obligates (1) the utility, (2) any company which is owned or controlled by the utility, or (3) any person who has an exclusive contract with the utility to install the measure.

(2) A utility also "installs" a measure when it leases a measure, no matter who makes the actual installation.

(3) A utility "supplies" a measure when it sells a measure at retail to an eligible customer.

(4) A utility "finances" the supply or installation of a measure when the loan contract names as the lender either (1) the utility, (2) any company which is owned or controlled by the utility, or (3) any person who has an exclusive contract or agreement with the utility to make loans for energy conservation or renewable resource measures.

§ 456.502 Prohibition.

(a) Except as provided in this Subpart, no covered utility may supply, install, or finance the supply or installation of any energy conservation or renewable resource measure.

(b) Notwithstanding §§ 456.503-456.506, no covered utility may supply, install, or finance the supply or installation of any energy conservation or renewable resource measure if the Sec-

retary has determined, after notice and opportunity for public hearing, and after consultation with the Federal Trade Commission, that—

(1) Such supply, installation, or financing is being carried out by such utility at unreasonable rates or on unreasonable terms or conditions, or

(2) Such supply, installation, or financing carried out by such utility has a substantial adverse effect upon competition.

(c) Violations of this section are subject to a civil penalty of not more than \$25,000 for each day of violation assessed by order of the Secretary pursuant to Sections 216(h) and 219 of NECPA and § 456.606 of these rules.

§ 456.503 Exception for certain measures and small loans.

(a) The prohibition in § 456.502(a) shall not apply to the supply, installation, or financing of (1) furnace efficiency modifications, (2) clock thermostats, and (3) devices associated with load management techniques.

(b) The prohibition in § 456.502(a) shall not apply to the financing of the purchase or installation of an energy conservation or renewable resource measure if the principal of such loan does not exceed \$300.

§ 456.504 Exception for existing supply, installation, and financing.

(a) Any supply, installation, or financing of any energy conservation or renewable resource measure that the utility was engaged in on November 9, 1978, shall not be subject to the prohibition in § 456.502(a):

(1) Prior to thirty days after promulgation of these rules,

(2) During such time as applications for determinations with respect to such activity, filed in accordance with § 456.507, are pending, and

(3) Upon a final determination that such energy conservation or renewable resource measure was being supplied, installed, or financed on November 9, 1978 by the utility seeking the determination.

(b) Any supply, installation, or financing of any energy conservation or renewable resource measure which the utility had by November 9, 1978, broadly advertised that it would supply, install, or finance, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying, installing, or financing shall not be subject to the prohibition in § 456.502(a):

(1) Prior to thirty days after promulgation of these rules,

(2) During such time as applications for determinations with respect to such activity filed in accordance with § 456.507 are pending.

(3) Upon a final determination that the utility had by November 9, 1978,

either broadly advertised its supply, installation, or financing of such measures or had completed substantial preparations for its supplying, installing, or financing of such measures.

§ 456.505 Waivers.

(a) The Assistant Secretary for Conservation and Solar Applications may, in consultation with the Administrator of the Economic Regulatory Administration, waive any prohibition of § 456.502(a) upon petition by a covered utility pursuant to § 456.507 and a finding that:

(1) The petition, in the case of a regulated utility or a nonregulated utility subject to a State Plan, is supported by the Governor, and

(2) If such waiver were granted:

(i) Fair and reasonable prices and rates of interest would be charged, and

(ii) The otherwise prohibited activities would not involve or result in unfair methods of competition or unfair or deceptive acts or practices.

(b) Before the Assistant Secretary makes the finding described in paragraph (a)(2)(i) of this section, he or she shall consult with those staff members of the Federal Trade Commission as the Chairman of the Commission may designate.

§ 456.506 Exception for supply, installation, and financing authorized by State Law.

(a) The prohibition in § 456.502(a) shall not apply to any supply, installation, or financing of any energy conservation or renewable resource measure:

(1) Which a State law or regulation in effect on November 9, 1978, either required or explicitly permitted a covered utility to engage in; or

(2) Which the Attorney General of the appropriate State certifies to the Secretary was intended by a State law or regulation in effect on November 9, 1978, to be excepted from the prohibition in Section 216 (a) of NECPA.

(b) A covered utility is exempted from any Federal requirement to include in its Residential Conservation Service Program any supply, installation, or financing of any energy conservation or renewable resource measure in which it is engaged by reason of the exception in paragraph (a) of this section.

§ 456.507 Procedure for obtaining determinations and waivers.

(a) A utility making application for a determination under § 456.504 shall make its application in accordance with Subpart G of Part 205 of these rules. All such applications shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. All such applications shall contain all information

necessary for the determination required by § 456.504.

(b) A utility making a petition for a waiver under § 456.505 shall file such petition clearly labelled as such with the Assistant Secretary for Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545. All such petitions shall contain all information necessary for the findings required by § 456.505.

(c) In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exception or waiver would be applicable, informing them that they may within 10 days submit comments on the application or petition to the appropriate office of the Department of Energy. The application or petition filed with the Office of Hearings and Appeals or the Assistant Secretary for Conservation and Solar Applications shall include a certification that the applicant or petitioner has complied with the requirements of this subsection.

Subpart F—Federal Standby Authority and Enforcement Provisions

§ 456.601 Scope.

This subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the Residential Conservation Service Program when a State or nonregulated utility does not submit an acceptable Residential Conservation Service Plan or fails to implement adequately an approved plan. These procedures are required to be implemented by the Secretary pursuant to the provisions of section 219 of NECPA. Section 456.602 specifies the conditions under which the Secretary shall invoke standby authority for regulated utilities and nonregulated utilities. Sections 456.603 and 456.604 specify the content of the Federal plans for States and nonregulated utilities, respectively. Section 456.605 specifies the procedures followed by the Secretary if a public utility fails to comply with a Federal standby order issued pursuant to §§ 456.603 or 456.604. Section 456.606 specifies the civil penalties which the Secretary may assess and the enforcement provisions.

§ 456.602 Conditions under which standby authority shall be invoked.

The Secretary shall invoke standby authority if he determines:

(a) That a State fails to submit a Residential Conservation Service Plan meeting the requirements of Subparts B and C within 270 days after final promulgation of these rules or within

such additional period as the Secretary allows pursuant to § 456.206(b) or (d);

(b) That a nonregulated utility fails to submit a Residential Conservation Service Plan meeting the requirements of Subpart D within 270 days after final promulgation of these rules or within such additional period as the Secretary allows pursuant to § 456.406(a) or (c);

(c) After notice and opportunity for a public hearing, that an approved State plan is not being adequately implemented in a State;

(d) After notice and opportunity for a public hearing, that an approved plan is not being adequately implemented by a nonregulated utility.

§ 456.603 Standby authority in lieu of State plans.

When the Secretary determines that one of the conditions specified in § 456.602(a) or (c) exists:

(a) The Secretary shall promulgate a Residential Conservation Service Plan which meets the requirements of Subparts B and C of this part and which is applicable to each covered regulated utility in the State;

(b) The Secretary shall, by order, require each covered regulated utility in the State to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order; and

(c) If the State had an approved plan which included nonregulated utilities, the Secretary shall take the actions described in §§ 456.604(a) and (b).

§ 456.604 Standby authority for nonregulated utilities.

When the Secretary determines that one of the conditions specified in § 456.602(b) or (d) exists:

(a) The Secretary shall, by order, require the covered nonregulated utility to promulgate a plan which meets the requirements of Subpart D of this part; and

(b) The Secretary shall, by order, require such nonregulated utility to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order.

§ 456.605 Failure to comply with orders.

If the Secretary determines that any covered utility to which an order has been issued pursuant to §§ 456.603(b), 456.604(a), or § 456.604(b) has failed to comply with such order, the Secretary may file a petition in the appropriate United States district court to enjoin such utility from violating the order.

§ 456.606 Enforcement provisions.

(a) Any covered utility which violates any requirement of a plan promulgated under §§ 456.603(a) or 456.604(a), or which fails to comply with an order under §§ 456.603(b), 456.604(a), or § 456.604(b) within 90 days from the issuance of such order, or which violates the prohibition in § 456.502 concerning supply, installation, or financing by covered utilities, shall be subject to a civil penalty of not more than \$25,000 for each violation.

(b) Each day that such violation continues shall be considered a separate violation.

(c) A civil penalty under this section shall be assessed by an order of the Secretary.

(d) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. The notice of proposed penalty shall inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of paragraph (f) of this section apply, in lieu of the procedures in paragraph (e) of this section, with respect to the assessment of a civil penalty.

(e) (1) Unless the election described in paragraph (d) of this section is made within 30 calendar days after receipt of the notice given under paragraph (d) of this section, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. Such determination of violation shall be made after an opportunity has been afforded for an agency hearing pursuant to Section 554 of Title 5, United States Code, before an administrative law judge appointed under Section 3105 of Title 5. The assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a civil penalty is assessed under this subsection may, within 60 calendar days after the date of the order of the Secretary assessing the penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(f) (1) In any case where the procedures of this subsection have been elected, as described in paragraph (d)

of this section, the Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty under paragraph (d) of this section.

(2) If the civil penalty assessed by order under subparagraph (1) of this paragraph has not been paid within 60 calendar days after the assessment order was made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this Subsection apply may not be revoked, except with the consent of the Secretary.

(g) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (e) of this section, or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (f) of this section, the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgment imposing the civil penalty shall not be subject to review.

(h) Notwithstanding the provisions of Title 28, United States Code, or of Section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this section applies (including any related collection action) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

Subpart G—Renewable Resource Installation and Materials Standards

§ 456.701 Scope.

This subpart contains both the installation and materials standards with respect to renewable resource measures. Not all renewable resource measures have installation or materials standards under these rules. Those measures not addressed in this Subpart either have been determined not

to require Federal standards or have not yet been determined whether or not they require Federal standards.

§ 456.702 Solar Domestic Hot Water and Active Solar Space Heating Systems.

(a) Solar Domestic Hot Water Systems, other than Thermosiphon Hot Water Heaters, and Active Solar Space Heating Systems shall be constructed and installed in compliance with the *HUD Intermediate Minimum Property Standards Supplement*, Solar Heating and Domestic Hot Water Systems, 4930.2, 1977 Edition, U.S. Department of Housing and Urban Development.

(b) Any reference in the HUD Intermediate Minimum Property Standards Supplement to exceptions or alternatives that may be approved by HUD with respect to the standards therein shall not apply under this section.

§ 456.703 Thermosiphon Hot Water Heaters. [Reserved.]

§ 456.704 Passive Solar Space Heating and Cooling Systems. [Reserved.]

§ 456.705 Swimming Pool Heaters. [Reserved.]

§ 456.706 Wind Systems.

(a) *Wind System Location.* (1) A Wind System shall be located a minimum horizontal distance of 1½ tower lengths from an occupied structure (other than one which supports the wind equipment).

(2) A Wind System shall be located a minimum distance of 1½ tower lengths from any property line, or a right-of-way for electrical transmission or distribution lines.

(3) Wind System components shall be accessible for cleaning, adjusting, servicing, examination, repair or replacement without trespassing on adjoining property.

(b) *Requirements for Wind Systems.* A Wind System shall:

(1) Be omni-directional in response to the wind direction, or face a quadrant where 60 percent of the wind energy is available at the site;

(2) Be self-starting by the wind or have an automatic starting system.

(3) Have at least two overspeed control methods, one automatic, to protect the machine from overspeed failure.

(4) Have a rated survival wind speed equal to, or greater than, the highest wind recorded during the last three years at the nearest official weather station having such records.

(5) Upon installation be inspected by the manufacturer or his designated representative who shall sign a certificate that the system is correctly installed, which certificate shall be given to the eligible customer.

(6) Bear an identification plate stating the voltage of the system and such

other information as may be required by the State Plan, which plate shall be legible from the ground.

Subpart H—Energy Conservation Material Standards

§ 456.801 Purpose and Applicability

This subpart identifies and describes standards for products and materials specified as energy conservation measures. These standards apply to energy conservation measures, which when they are suggested measures, are supplied or installed under the circumstances described in the State Plan pursuant to § 456.305.

§ 456.802 Definitions.

(a) "ASTM" means American Society for Testing and Materials.

(b) "ASTM C 177" means ASTM Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate Standard Test Method.

(c) "ASTM C236" means ASTM Standard Test Method for Thermal Conductance and Transmittance of Built-up Sections by Means of the Guarded Hot Box.

(d) "ASTM C 518" means ASTM Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

(e) "ASTM E 84" means ASTM Standard Test Method for Surface Burning Characteristics of Building Materials.

(f) "ASTM E 96" means ASTM Standard Test Method for Water Vapor Transmission of Materials in Sheet Form.

(g) "Critical Radiant Flux" means the levels of incident radiant heat energy on the insulation below which flames will cease to propagate.

(h) "Smoldering Combustion" means the combustion of solid materials without the accompaniment of flame.

(i) "Thermal Resistance" means resistance to the flow of heat.

§ 456.803 Standards for Loose-Fill Cellulosic or Wood Fiber Insulation.

(a) *Scope.* This section applies to loose-fill cellulosic or wood fiber insulation.

(b) *Definitions.* (1) "Loose-fill cellulosic or wood fiber insulation" means insulation composed of cellulosic or wood fibers, or any combination thereof, suitable for pneumatic or poured application.

(2) "MIL-STD-810, Method 508" means Military Standard Test Method for Fungi Resistance.

(c) *Physical Requirements.*—(1) *Thermal resistance.* Loose-fill cellulosic or wood fiber insulation shall have a thermal resistance (R-value) of not less than 3.0 ft²·hr °F/Btu per inch thickness. This shall be verified by

testing in accordance with the test method described in Subsection (d)(2). Standard thicknesses for loose-fill cellulosic or wood fiber insulation shall be 1 inch, 3.5 inches, and 6 inches. The R-value for any given sample of loose-fill cellulosic or wood fiber insulation shall not be more than 5 percent below the arithmetic average of the R-values of the specimens tested. This shall be verified by testing in accordance with the test method described in paragraph (d)(2) of this section.

(2) *Fire safety.*—(i) *Critical radiant flux.* The critical radiant flux of loose-fill cellulosic or wood fiber insulation shall not be less than 0.12 W/cm² for each of the three specimens when tested in accordance with the test described in paragraph (d)(3) of this section.

(ii) *Smoldering combustion.* Loose-fill cellulosic or wood fiber insulation shall not flame or show a weight loss greater than 15 percent of the initial weight, for each of the three specimens, when tested in accordance with the test procedure described in paragraph (d)(4) of this section.

(iii) *Flame Resistance Permanency.* [Reserved]

(3) *Vermin-resistance.* Loose-fill cellulosic or wood fiber insulation shall be chemically treated to resist vermin where starch would be found present in the insulation by testing in accordance with the test method described in paragraph (d)(5) of this section.

(4) *Moisture adsorption.* The percent moisture gained in loose-fill cellulosic or wood fiber insulation from exposure to humidity shall be no more

than 7 percent by weight when tested in accordance with the test method described in paragraph (d)(6) of this section.

(5) *Odor emission.* Loose-fill cellulosic or wood fiber insulation shall not have a detectable odor which would be found objectionable by testing in accordance with the test method described in paragraph (d)(7) of this section.

(6) *Corrosiveness.* Loose-fill cellulosic or wood fiber insulation shall be judged noncorrosive when tested in accordance with the test method described in paragraph (d)(8) of this section.

(7) *Fungi resistance.* Loose-fill cellulosic or wood fiber insulation shall show no more fungal growth than the control material would show by testing in accordance with the test method described in paragraph (d)(9) of this section.

(8) *Marking.* Each bag of insulation shall be marked with the following information:

(i) Name of Manufacturer.

(ii) Recommended method of application (blowing or pouring).

(iii) Minimum net weight of insulation.

(iv) Table I filled in to show manufacturer's recommended insulation thickness and maximum coverage per bag for specified thermal resistance value.

Where the insulation is intended for application by either blowing or pouring, the bag shall have a separate coverage chart for each type of application.

TABLE I. COVERAGE CHART

To Obtain Thermal Resistance* (R-Value) of	Minimum Number of Bags per 1000 Sq.Ft. (MSF)	Installed Insulation Should Not Be Less Than:	Maximum Sq.Ft. Coverage per Bag	The weight per Sq.Ft. of Installed Insulation Should Be Not Less Than**
ATTIC				
R-40	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-32	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-24	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-19	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-13	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
SIDEWALLS				
R-___	bags/MSF	2 inches thick (nominal)	sq. ft.	lbs/sq.ft.
R-___	bags/MSF	4 inches thick (nominal)	sq. ft.	lbs/sq.ft.
R-___	bags/MSF	6 inches thick (nominal)	sq. ft.	lbs/sq.ft.

* At 75°F Mean Temperature

** Based on settled density as determined in (d)(1)

[6450-01-M]

(v) The following warning: "Recessed lights and certain electrical devices require clearances from insulation material. Do not install within three inches of these devices."

(d) *Test Methods*—(1) *Test method for measuring settled density*.—(i) *Apparatus*. (A) An insulation specimen container constructed of glass with a flat bottom (approximate diameter of 15.5 cm (5.9 in)), straight sides (without a flared lip or spout) and a total volume of 3.5 to 5 liters (213.6 to 305.1 cu. in).

(B) A flat disk with a total weight of 75 ± 5 g (2.65 ± 0.18 oz) and of a suitable diameter to fit loosely into the specimen container.

(C) A balance of 2 Kg (4.4 lbs) capacity accurate at least to 0.2 g (0.007 oz).

(D) Blower apparatus, two units (supply and overflow) meeting the following specifications: (The Commission staff has found that a Brewer Electric Manufacturing Co., Model 98805 blower is suitable for this purpose, although other blowers may be suitable.)

(1) Each blower apparatus shall be capable of blowing an average of 272.2 Kg (600 lbs.) of insulation per hour.

(2) Each blower apparatus shall have a nominal air flow of 2.1 cubic meters/min. ($75 \text{ ft}^3/\text{min.}$).

(3) Each blower apparatus shall have a nominal motor speed of 16,450 revolutions per minute at 115 VAC.

(E) A shaker unit capable of shaking 4.5 Kg (10 lbs) of weight with a vertical motion of 0.5 g Root Mean Square (RMS) acceleration at an approximate frequency of 9 Hertz (Hz) and displacement of approximately .25 cm (0.1 in) peak to peak. (The Commission staff has found that a Tyler Industries, Portable Sieve Shaker Model Rx-24 is suitable for this purpose, although other shakers may be suitable.)

(F) Fill chamber—45.7 cm (18 in) high x 38.1 cm (15 in) wide x 38.1 cm (15 in) deep (see Figure 1 for details).

(G) A cyclone receiver—see Figure 2 for complete details.

(H) Various lengths of nominally 2-inch diameter hose (see Figure 1 for details), as follows:

(1) A supply source hose, 274.3 ± 5.1 cm ($9 \text{ ft} \pm 2 \text{ in}$)

(2) A cyclone receiver hose, 182.9 ± 5.1 cm ($6 \text{ ft} \pm 2 \text{ in}$)

(3) A fill chamber exit hose, 91.4 ± 5.1 cm ($3 \text{ ft} \pm 2 \text{ in}$)

(4) An overflow exhaust hose, length as needed.

(I) Blower Control(s) capable of operating the two blowers at 40 volts RMS. As an example, a variac for each of the two blowers with sufficient rating to operate at 40 volts and 12 amperes RMS would be acceptable.

(J) An insulation holding box to hold a sufficient quantity of insulation to fill the specimen container four times.

(ii) *Conditioning*. Specimens shall be conditioned to equilibrium at $21 \pm 5^\circ\text{C}$ ($69.8 \pm 9^\circ\text{F}$) and $50 \pm 5\%$ relative humidity. A less than 1% change in net weight of the specimen in two consecutive weighings with two hours between each weighting constitutes equilibrium.

(iii) *Test Specimen Preparation*.—(A) *Pneumatic Applications*. (1) If ambient laboratory conditions are different from those specified, test the specimen within 10 minutes after it has been conditioned.

(2) Pour the conditioned insulation into the holding box (Apparatus #10) in sufficient quantity to fill the specimen container (Apparatus #1) four times. Manually break up any large clumps of material that might cause feeding problems.

(B) *Pouring Applications*. (1) If ambient laboratory conditions are different from those specified in the conditioning section, test the specimen within one hour after it has been conditioned.

(2) Pour loose fill insulation into a simulated attic space until fill. The attic space shall be formed by two (2 x 6) joists placed 40.6 cm (16 in) on center with 1.27 cm ($\frac{1}{2}$ in) plywood nailed to the ends and bottom. Fluff the material with a 50.8 cm (20 in) wide garden rake, applying a series of small amplitude strokes while moving the rake slowly along the joist. Repeat the fluffing process six times.

(iv) *Procedure*—(A) *Procedure for Pneumatic Applications*. (1) The apparatus shall be set up as shown in Figure 1 or as described in subsection (d)(1)(i) *Apparatus*. Connect one end of the supply source hose (Apparatus H(1)) to the intake of the supply blower (Apparatus D). The other end will be used to pick up insulation from the holding box (Apparatus J). Connect one end of the cyclone receiver hose (Apparatus H(2)) to the outlet of the supply blower and the other end to the cyclone receiver (Apparatus G). Connect one end of fill chamber exit hose (Apparatus H(3)) to the intake of the overflow blower (Apparatus D) and the other end to the fill chamber (Apparatus F). Connect one end of the variable length overflow exhaust hose (Apparatus H(4)) to the outlet of the overflow blower. The other end should be conveniently placed to reduce insulation dust in the test area.

(2) Weigh the empty insulation specimen container and record its weight.

(3) Place the empty insulation specimen container in the fill chamber (Apparatus F) centered under the cyclone

receiver (Apparatus G), and close the front cover.

(4) Adjust the blower control(s) (Apparatus I) such that the supply and overflow blowers will operate at a no load voltage of 40 volts RMS.

(5) Turn on the blowers simultaneously and proceed to fill the container by picking up material from the box using the supply source hose.

(6) The container may fill unevenly, i.e., a void may tend to form off center in the container. If this occurs, stop the blowing process and rotate the container 180 degrees and continue the blowing process until the container just begins to overflow. If, for any reason, the filling process is interrupted more than the one time allowed to rotate the container, begin the process again.

(7) Gently screed the excess material using a straight edge so as to leave a uniform surface of the insulation flush with the top of the container.

(8) Weigh the filled and leveled container and record the weight. Take care not to bump or jar the container so as not to introduce any extraneous settling of the insulation.

(9) Cover the container to prevent spilling and secure the container to the shaker. Operate the shaker for a period of 5 minutes ± 15 seconds.

(10) Remove the container from the shaker and uncover, taking care not to bump or jar it. Lower the disk very slowly into the container until it starts to contact the insulation. At this point, release the disk and allow it to settle onto the insulation under its own weight.

(11) Measure the volume of the space occupied by the settled insulation using the bottom edge of the disk as the upper datum point. If the disk is not level, measure the high and low points of the bottom of the disk and average the readings and use this as the height measurement in calculating the volume (V_s). This settled insulation volume and insulation weight (w) shall be used to calculate the settled density.

(12) Repeat this procedure (1 through 11) using another specimen of the insulation until four settled densities are obtained for a given material. Then average these figures to arrive at a final settled density.

(B) *Procedures for Pouring Applications*. (1) Weigh the empty insulation specimen container and record its weight.

(2) Using a shovel remove insulation from the simulated attic space and place it into the specimen container until the container just begins to overflow.

(3) Follow steps 7 through 11 as specified under Subsection (d)(1)(iv)(A) *Procedure for Pneumatic Applications*.

(4) Repeat this procedure (1 through 3) using another specimen of the insulation until four settled densities are obtained for a given material. Then average these figures to arrive at a final settled density.

(C) *Calculations.* Calculate the settled density of each specimen using the following formula:

Settled Density in Kg/m³ = W/V_s , where

W = combined weight of the container and insulation in grams, minus the weight of the container in grams.

V_s = volume of insulation in liters after shaking.

(2) *Test method for thermal resistance.* (i) Perform all testing at a mean temperature of 23.9°C (75° F)

(ii) Prepare the insulation to be tested by following the test method for settled density at paragraph (d)(1) of this section.

(iii) Determine the thermal conductance of four samples in accordance with either ASTM C 177, C 518 or C 236. In case of a question, ASTM C 177 shall be used to determine the thermal conductance of the standard reference material used to calibrate the C 518 or C 236 apparatus.

(iv) Calculate the thermal resistance of each sample by taking the reciprocal of each sample's thermal conductance.

(v) Calculate the arithmetic average of the R-values of the four samples. This arithmetic average is the thermal resistance of the loose-fill cellulosic insulation which has been tested.

(3) *Test procedures for critical radiant flux.* Critical radiant flux shall be determined in accordance with the following test procedure; Method of test for critical radiant flux of exposed attic floor insulation using a radiant heat energy source. Prepare the insulation to be tested by following the test method for settled density at paragraph (d)(1) of this section.

(i) *Apparatus.* Test Chamber (Figure 3). An air-gas fueled radiant heat energy panel or equivalent panel inclined at 30° above and directed at a horizontally-mounted attic floor insulation specimen. The radiant panel generates a radiant energy flux distribution ranging along the 100-cm length of the test specimen from a nominal maximum of 1.0 w/cm² to a minimum of 0.1 w/cm². The test is initiated by open flame ignition from a pilot burner. The distance burned to flame-out is converted to w/cm² from the flux profile graph (Figure 10) and reported as critical radiant flux, w/cm².

(ii) *Construction and instrumentation of the radiant panel test chamber.* The radiant panel test chamber shall be constructed and instrumented as follows:

(A) The radiant panel test chamber, Figures 5 and 6, shall consist of an enclosure 140 cm (55 inches) long by 50 cm (19½ inches) deep by 71 cm (28 inches) above the test specimen. The sides, ends, and top shall be of 1.3 cm (½ inch) calcium silicate board, such as Marinite I, 0.74 g/cm³ (46 lb/ft³) nominal density, with a thermal conductivity at 177° C (350° F) of 1.11 cal (g)/hr cm² deg C per cm [0.89 Btu/(hr) (ft²) (deg F per in)]. One side shall be provided with an approximately 10 cm x 110 cm (4 x 44 inches) draft tight fire resistant glass window so that the entire length of the test specimen may be observed from outside the fire test chamber. On the same side and below the observation window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. A draft tight, fire resistant observation window may be installed at the low flux end of the chamber.

(B) The bottom of the test chamber shall consist of a sliding steel platform which has provisions for rigidly securing the test specimen holder in a fixed and level position. The free, or air access, area around the platform shall be in the range of 1935-3225 cm² (300-500 square inches). The top of the chamber shall have an exhaust stack with interior dimensions of 10.2 cm (4 inches) wide by 38 cm (15 inches) deep by 30 cm (12 inches) high at the opposite end of the chamber from the radiant energy source. The radiant heat energy source shall be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 30.5 x 45.7 cm (12 by 18 inches). The panel fuel system shall consist of a venturi-type or equivalent aspirator for mixing gas and air at approximately atmospheric pressure, a clean dry air supply capable of providing 28.3 NTP (Normal Temperature and Pressure) m³ per hr (1000 standard cubic feet per hour) at 7.6 cm (3.0 inches) of water, and suitable instrumentation for monitoring and controlling the flow of fuel to the panel.

(C) The radiant heat energy panel shall be mounted in the chamber at 30° to the horizontal specimen plane. The horizontal distance from the 0 mark on the specimen fixture to the bottom edge (projected) of the radiating surface of the panel is 8.9 cm (3½ inches). The panel to specimen vertical distance is 14 cm (5½ inches) (see Figure 5). The angle and dimensions given above are critical in order to obtain the required radiant flux. The radiation pyrometer for standardizing the thermal output of the panel shall be suitable for viewing a circular area 25.4 cm (10 inches) in diameter at a range of about 1.37 m (54 inches). It shall be calibrated over the black body temperature range of 490-510° C (914-

950° F) in accordance with the procedure described in Subsection (d)(3)(viii). A high impedance voltmeter with a suitable millivolt range shall be used to monitor the output of the radiation pyrometer described. The dummy holder (see Figure 7), shall be constructed from heat-resistant stainless steel (AISI Type 300 (UNA-N08330)) or equivalent, thickness 0.198 cm (0.078 inches), having overall dimension of 114 cm (45 inches) by 32 cm (12½ inches) with a specimen opening of 20 cm (7.9 inches) by 100 cm (39.4 inches). Six slots are cut in the flange on either side of the holder to reduce warping. The holder is fastened to the platform with two stud bolts at each end.

(D) The specimen tray (see Figure 8) shall be constructed from heat-resistant stainless steel (AISI Type 300 (UNA-N08330)) or equivalent, thickness 0.198 cm (0.078 inches), having overall dimensions of 110 cm (43.3 inches) by 27.3 cm (10.8 inches). The depth of the tray is 5 cm (2 inches). The flanges of the specimen tray are drilled to accommodate two stud bolts at each end: the bottom surface of the flange is 2.1 cm (0.83 inches) below the top edge of the specimen tray.

(E) The pilot burner, used to ignite the specimen shall be a propane venturi torch with an axially symmetric burner tip having a propane supply tube with an orifice diameter of 0.0076 cm (0.003 inches). In operation, the propane flow is adjusted to give a penic flame blue inner cone length of 1.3 cm (½ inch). The pilot burner is positioned so that the flame generated will impinge on the centerline of the specimen at the 0 distance burned point at right angles to the specimen length (see Figures 5 and 6). The burner shall be capable of being swung out of the ignition position so that the flame is horizontal and at least 5 cm (2 inches) above the specimen plane.

(F) Two 3.2 mm (¼ inch) diameter stainless steel sheathed, grounded junction chromel alumel thermocouples are located in the flooring radiant panel test chamber (see figures 5 and 6). Thermocouples shall be kept clean to insure accuracy of readout. The chamber thermocouple is located in the longitudinal central vertical plane of the chamber 2.5 cm (1 in) down from the top and 10 cm (4 in) back from the inside of the exhaust stack. The exhaust stack thermocouple is centrally located 15.2 cm (6 inches) from the top. A temperature indicating device with a range of 100-500° C (212-932° F) may be used to determine the chamber temperatures prior to a test.

(G) An exhaust duct with a capacity of 28.3-85 NTP m³ per minute (1000-3000 SCFM) decoupled from the chamber stack by at least 7.6 cm (3

inches) on all sides and with an effective area of the canopy slightly larger than the plane area of the chamber with the specimen platform in the out position shall be used to remove combustion products from the chamber. With the panel turned on and dummy specimen in place, there shall be no measurable difference in air flow through the chamber stack with the exhaust on or off.

(H) The dummy specimen which is used in the flux profile determination shall be made of 1.9 cm ($\frac{3}{4}$ inch) inorganic 0.74 g/cm³ (46 lbs/ft³) nominal density calcium silicate board, such as Marinite I (see Figure 7). It is 25 cm (10 inches) wide by 107 cm (42 inches) long with 2.7 cm (1- $\frac{1}{8}$ inches) diameter holes centered on and along the centerline at the 10, 20, 30, 40, 50, 60, 70, 80, 90 cm locations, measured from the maximum flux end of the specimen. The total heat flux transducer used to determine the flux profile of the chamber in conjunction with the dummy specimen should be of the Schmidt-Boelter type, having a range of 0-1.5 watts/cm² (0-1.32 Btu/ft² s), and shall be calibrated over the operating flux level range of 0.10 to 1.5 watts/cm² in accordance with the procedure outlined in paragraph (d)(3)(viii) of this section. The incoming cooling water flowing through the instrument shall be 15-25° C (59-77° F). A high impedance voltmeter with a resolution of at least 0.01 m.v. shall be used to measure the output of the total heat flux transducer during the flux profile determination. A timer shall be used for measuring preheat and pilot contact time.

(iii) *Safety procedures.* The possibility of a gas-air fuel explosion in the test chamber should be recognized. Suitable safeguards consistent with sound engineering practice should be installed in the panel fuel supply system. These may include one or more of the following (A) a gas feed cut-off activated when the air supply fails, (B) a fire sensor directed at the panel surface that stops fuel flow when the panel flame goes out, (C) a commercial gas water heater or gas-fired furnace pilot burner control thermostatic shut-off which is activated when the gas supply fails or other suitable and approved device. Manual reset is considered a desirable feature of any safeguard system used. In view of the potential hazard from products of combustion, the exhaust system must be so designed and operated that the laboratory environment is protected from smoke and gas. The operator should be instructed to minimize his exposure to combustion products by following sound safety practice, e.g., insure exhaust system is working properly, wear appropriate clothing including gloves, and so forth.

(iv) *Test specimens.* Test specimens intended for blowing applications shall be blown into the tray. The tray shall be filled by blowing the insulation through a commercial blower (Note 1) using 30.48 m (100 ft.) of nominal 2 inch flexible blower hose. The tray shall be located at the same level as the blowing machine on a level floor. When blowing, the hose shall be pointed 10 ± 1 degrees upward. The bottom end of the hose orifice shall be 17.7 cm (7 inches) above the floor surface. When the insulation is blowing at a steady rate, start filling the tray so that the main stream of the material is falling over the rear wall; slowly move backward maintaining the height and direction of the hose as specified. Continue filling the tray at an even rate until the material falls over the front wall of the tray. Scream the insulation to the top of the tray, taking care not to compact the insulation or leave large voids in the surface of the material. Insulation intended for pouring applications shall be poured into the tray until the tray is overfilled and then carefully screeded to the top of the tray taking care not to compact the insulation or leave large voids in the surface of the material. Insulation suitable for both pouring and blowing applications may be subjected to the entire test procedure for each of the intended applications. Three specimens per sample shall be tested.

NOTE 1—Breuer Electric Manufacturing Company, Model 98805 has been found to be suitable for this purpose.

(v) *Radiant heat energy flux profile standardization.* In a continuing program of tests, the flux profile shall be determined not less than once a week. Where the time interval between tests is greater than one week, the flux profile shall be determined at the start of the test series.

(A) Mount the dummy specimen in the mounting frame and attach the assembly to the sliding platform. With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for 1 hour. The pilot burner is off during this determination. Adjust the fuel mixture to give an air-rich flame. Make fuel flow settings to bring the panel to an apparent black body temperature as measured by the radiation pyrometer, of about 500° C (932° F), and the chamber temperature to about 180° C (356° F). When equilibrium has been established, move the specimen platform into the chamber. Allow 0.5 hours for the closed chamber to equilibrate. Measure the radiant heat energy flux level at the 40 cm point with the total flux meter instrumentation. This is done by inserting the flux meter in the opening so that its detecting plane is 0.16-0.32 cm ($\frac{1}{16}$ - $\frac{1}{8}$ inch) above and

parallel to the plane of the dummy specimen and reading its output after 30 ± 10 seconds. If the level is within the limits specified, the flux profile determination is started. If it is not, make the necessary adjustments in panel fuel flow. A suggested flux profile data log format is shown in Figure 9.

(B) The test shall be run under chamber operating conditions which give a flux profile as shown in Figure 10. The radiant heat energy incident on the dummy specimen shall be between 0.87 and 0.95 W/cm² (0.77 and 0.83 Btu/ft² sec) at the 20 cm point, between 0.48 and 0.52 W/cm² (0.42 and 0.46 Btu/ft² sec) at the 40 cm point, and between 0.22 and 0.26 W/cm² (0.19 and 0.23 Btu/ft² sec) at the 60 cm point. Insert the flux meter in the 10 cm opening following the procedure given above. Read the millivolt output at 30 ± 10 seconds and proceed to the 20 cm point. Repeat the 10 cm procedure. The 30 to 90 cm flux levels are determined in the same manner. Following the 90 cm measurement, make a check reading at 40 cm. If this is within the limits set forth, the test chamber is in calibration and the profile determination is completed. If not, carefully adjust fuel flow, allow 0.5 hours for equilibrium and repeat the procedure. Plot the radiant heat energy flux data as a function of distance along the specimen plane on rectangular coordinate graph paper. Carefully draw the best smooth curve through the data points. This curve will hereafter be referred to as the flux profile curve.

(C) Determine the open chamber apparent black body and chamber temperatures that are identified with the standard flux profile by opening the door and moving the specimen platform out. Allow 0.5 hours for the chamber to equilibrate. Read the radiation pyrometer output and record the apparent black body temperature. This is the temperature setting that can be used in subsequent test work in lieu of measuring the radiant flux at 20 cm, 40 cm, and 60 cm using the dummy specimen. The chamber temperature also shall be determined again after 0.5 hours and is an added check on operating conditions.

(vi) *Conditioning.* Test specimens shall be conditioned to equilibrium at $21 \pm 3^\circ\text{C}$ (69.8 $\pm$ 5.4°F) and a relative humidity of 50 ± 5 percent immediately prior to testing. A less than 1% change in net weight of the specimen in two consecutive weighings with two hours between each weighing constitutes equilibrium.

(vii) *Test Procedure.* (A) With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for 1 hour. It is recommended that a sheet of inorganic mill-

board be used to cover the opening when the hinged portion of the front panel is open and the specimen platform is moved out of the chamber. The millboard is used to prevent heating of the specimen and to protect the operator. Read the panel apparent black body temperature and the chamber temperature. If these temperatures are in agreement to within $\pm 5^\circ\text{C}$ ($\pm 9^\circ\text{F}$) with those determined previously, during the flux profile standardization procedure, the chamber is ready for use.

(B) Mount the specimen tray with insulation on the sliding platform and position with stud bolts (see Figure 11). Ignite the pilot burner, move the specimen into the chamber, and close the door. Start the timer. After 2 minutes preheat, with the pilot burner on and set so that the flame is horizontal and 5 cm above the specimen, bring the pilot burner flame into contact with the center of the specimen at the 0 mark. Leave the pilot burner flame in contact with the specimen for 2 minutes, or until all flaming other than in the area of the pilot burner has ceased, then remove to a position of at least 5 cm above the specimen and leave burning until the test is terminated.

(C) If the specimen does not ignite within 2 minutes following pilot burner flame application, the test is terminated by extinguishing the pilot burner flame. For specimens that do ignite, the test is continued until the flame goes out. When the test is completed, the door is opened, and the specimen platform is pulled out.

(D) Measure the distance burned, i.e., the point of farthest advance of the flame front, to the nearest 0.1 cm (.03 in.). From the flux profile curve, convert the distance to W/cm^2 (Btu/ft^2 sec) critical radiant heat flux at flameout. Read to two significant figures. A suggested data log format is shown in Figure 12.

(E) Remove the specimen tray from the moveable platform. The succeeding test can begin as soon as the panel apparent black body temperature and chamber temperature are verified. The specimen tray should be at room temperature prior to insertion of the next specimen.

(viii) *Procedure for calibration of radiation instrumentation.*—(A) *Calibrate pyrometer.* Calibrate the radiation pyrometer by means of a conventional black body enclosure placed within a furnace and maintained at uniform temperatures of 490, 500, and 510°C (914, 932, and 950°F). The black body enclosure may consist of a closed chromel metal cylinder with a small sight hole in one end. Sight the radiation pyrometer upon the opposite end of the cylinder where a thermocouple indicates the black body tem-

perature. Place the thermocouple within a drilled hole and in good thermal contact with the black body. When the black body enclosure has reached the appropriate temperature equilibrium, read the output of the radiation pyrometer. Repeat for each temperature.

(B) *Total heat flux meter.* The total flux meter shall be calibrated by the NBS. (Direct request for such calibration services to the: Radiometric Physics Division, Code 534, National Bureau of Standards (NBS), Washington, DC 20234), or alternatively, its calibration shall be developed by transfer calibration methods with an NBS calibrated flux meter. This latter calibration shall make use of the radiant panel tester as the heat source. Measurements shall be made at each of the nine dummy specimen positions and the mean value of these results shall constitute the final calibration. It is recommended that each laboratory maintain a dedicated calibrated reference flux meter against which one or more working flux meters can be compared as needed. The working flux meters should be calibrated according to this procedure at least once per year.

(4) *Test procedures for smoldering combustion.* Smoldering combustion shall be determined in accordance with the following test procedure. Prepare the insulation to be tested by following the test method for settled density at paragraph (d)(1) of this section.

(i) *Apparatus.* (A) The specimen holder shall be an open-top 20 ± 0.2 cm ($7.87 \pm .88$ in.) square box, 10 ± 0.2 cm ($3.94 \pm .08$ in.) in height, fabricated from a single piece of 0.61 ± 0.88 mm thick (24 U.S. Standard gauge) stainless steel sheet with the vertical edges of the box overlapped, not to exceed 7 mm (.28 in.) in seam width, and soldered so as to be watertight. The specimen holder during test use shall rest upon a pad of unfaced glass fiberboard or equivalent having dimensions equal to or greater than those of the bottom of the specimen holder. The unfaced glass fiberboard shall be approximately 2.5 cm (1 in.) thick with a thermal conductivity of 0.30 ± 0.05 cal (g)/hr cm^2 $^\circ\text{C}/\text{cm}$ (0.24 ± 0.04 Btu/hr ft^2 $^\circ\text{F}/\text{in}$) at 23.9°C (75°F).

(B) *Ignition source.* The ignition source shall be a cigarette without filter tip made from natural tobacco, 85 ± 2 mm ($3.34 \pm .08$ in.) long with a tobacco packing density of 0.270 ± 0.020 g/ cm^3 (16.8 ± 1.24 lb/ ft^3) and a total weight of 1.1 ± 0.1 gm (0.0024 lb).

(C) *Balance.* A balance of 1 kg (2.205 lb) capacity, accurate at least to 0.1 g (0.0002 lb), is required.

(D) *Test area.* The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by

testing. Air velocities as measured by a hot wire anemometer in the vicinity of the surface of the specimen shall not exceed 0.5 m/sec (9.82 ft/sec). The test area shall be at $21 \pm 3^\circ\text{C}$ ($69.8 \pm 5.4^\circ\text{F}$) and 50 ± 5 percent relative humidity at the time the test begins.

(ii) *Test procedure.* (A) Specimens and cigarettes shall be conditioned in air at a temperature of $21 \pm 3^\circ\text{C}$ ($69.8 \pm 5.4^\circ\text{F}$) and a relative humidity of 50 ± 5 percent to equilibrium prior to test. A change of less than 1% in net weight of the specimen in two consecutive weighings with two hours between each weighing constitutes equilibrium. Cigarettes shall be removed from any packaging and exposed in a suitable manner to permit free movement of air around them during conditioning. Calculate the weight of material necessary to fill the holder (volume $4,000$ cm^3 or 0.14 ft^3) at the settled density as determined in paragraph (d)(1) of this section. The material shall be blown, combed, or otherwise mixed to remove lumps and shall be loaded uniformly into each specimen holder, level and flush to the top of the holder. The weight of each specimen shall be measured to the nearest 0.2 g (0.007 oz) or less by weighing the holder before and after filling. If the weight of the specimen is less than that calculated, the loaded holder shall be dropped from a height no greater than 7.6 cm (3 in) onto a hard flat surface and additional material added up to the top edge of the holder. This process shall be repeated until the calculated weight of material has been added and completely fills the holder. With the specimen in the holder and placed on the insulated pad, a rod of 8 mm (.31 in) diameter with a pointed end shall be inserted vertically into the approximate center of the material being tested and withdrawn to form an appropriate cavity for the ignition source, such that the cigarette fits snugly and maintains uniform contact with the specimen. A well lit cigarette, burned not more than 8 mm (0.31 in.), shall be inserted in the formed cavity, with the lit end upward and flush with the specimen surface. Burning of the cigarette and specimen shall be allowed to proceed undisturbed in the test area for at least 2 hours or until the smoldering is no longer progressing, whichever period is longer.

(B) After completion of burning and after the holder has cooled down to approximately room temperature, the specimen holder with its material residue shall be weighed, at least to the nearest 0.1 g (0.0035 oz), and the percent weight loss of the original specimen calculated. The weight of the cigarette residue is ignored in this calculation. (That is, the weight of the cigarette residue is not subtracted

from the net weight of the specimen holder's contents at the conclusion of the test.)

(C) Three specimens per sample shall be tested.

(5) *Test method for flame resistance permanency* [Reserved]

(6) *Test method for starch.* (i) Make a 1.3 litre stock solution of iodine (I_2) by dissolving 0.13 gm of I_2 in a solution of 2.6 gm of potassium iodide (KI) in 5 ml of water and diluting to 100 ml. Dilute a portion of this to a pale yellow color by mixing 1 volume of stock solution with nine volumes of water each time a test for starch is made.

(ii) Boil 0.5 of the insulation to be tested for several minutes with 10 ml of water. Filter, cooling the filtrate, and add one drop of iodine solution to the filtrate. Observe the color. A blue coloration is conclusive evidence of the presence of starch in the test specimen.

(7) *Test method for moisture absorption*—(i) *Apparatus.* The test sample container shall be 20cm x 20cm x 12.7cm (8 inches square by 5 inches deep).

(ii) Follow the test method for settled density at paragraph (d)(1) of this section from the beginning through the 5-minute shaking.

(iii) Condition the test specimen at 50 ± 2 percent relative humidity and 48.9°C (120°F) to constant weight, and record this first weight. Then increase the relative humidity to 90 ± 2 percent relative humidity, maintain for 24 hours, weigh again, and record this second weight.

(iv) Ascertain whether the second weight is greater than 107 percent of the first weight.

(8) *Test method for odor emission.*—(1) *Apparatus.* Stainless steel or glass containers with all metallic lids, containers and lids to produce no odor of their own.

(ii) Soak a 50 gm test specimen in distilled water at a temperature of 65°C (150°F) for 30 minutes in a closed container.

(iii) Then have a panel of five persons with normal odor perception examine the test specimen for odor using the following questions:

(A) Was there an odor?
(B) If yes, was the odor objectionable, pleasant or otherwise?
(C) If objectionable, was the odor weak, strong or very strong?

(iv) The test specimen shall be determined to have an objectionable odor if a majority of the panel finds an objectionable odor which is strong or very strong.

(9) *Test procedures for corrosiveness.* Determination of corrosiveness shall be in accordance with the following test procedure:

(i) *Apparatus and materials.* (A) Humidity chamber. A forced-air humidity chamber capable of maintaining $48.9 \pm 1.7^\circ\text{C}$ ($120 \pm 3^\circ\text{F}$) and 97 ± 1.5 percent relative humidity.

(B) Crystallizing dishes. Six, glass, 90 mm (3.54 in.) diameter by 50 mm (1.9 in.) height.

(C) Test coupons: Two each, 50.8 by 50.8 by 50.8 mm (2 by 2 in.) by 0.076 mm (0.003 in.) thick metal free of tears, punctures, or crimps as follows:

3003 bare aluminum, zero temper.
ASTM B 152, type ETP, Cabra No. 110 soft copper.

Low carbon, commercial quality, cold rolled, less than 30 carbon content, shim steel.

(D) Test specimens: Six test specimens of insulation shall be used for one test. Each specimen shall weigh 20 g (0.7 oz). Prepare the insulation to be tested by following the test method for settled density at paragraph (d)(1) of this section.

(ii) *Procedure.* The metal coupons shall be cleaned by the following method:* At no time during the fabrication, cleaning or testing, shall the metal coupons be touched by ungloved hands. All chemicals used shall be of certified American Chemical Society reagent grade or better, free from oily residues and other contaminants. Water shall be distilled or deionized water. Handle cleaned coupons only with clean forceps. Clean copper coupons until completely free of water-breaks. A water-break is defined as a break, separation, beading or retrac-

*CPSC has determined the following method to be suitable for cleaning presently available metal coupons to a water-break free criterion. Because protective coatings used with the coupons may change in the future, other cleaning steps may be necessary in order to meet the water-break free criterion; however, the physical integrity of the coupons must not be impaired.

tion of the water film as the coupon is held vertically after wetting. The water film should become gradually thinner at the top and heavier at the bottom. Immerse the coupons in refluxing or boiling 1,1,1-trichloroethane (TCE) for 2 hours or by ultrasonic cleaning in TCE for 12 minutes, minimum. Rinse coupons with fresh TCE twice. Air dry. Rinse with water. Inspect for water-break free surface. Hot air dry.

Clean steel coupons until completely free of water-breaks. Immerse the coupons in room temperature TCE for 15 minutes with agitation. Rinse coupons with fresh TCE twice. Air dry. Immerse the coupons in 5 percent by weight aqueous sodium hydroxide at 60°C for 15 minutes with occasional agitation. Rinse with water until no residual caustic is present. Immerse the coupons in refluxing or boiling ethanol for 5 minutes. Rinse coupons in fresh, room temperature ethanol twice. Rinse with water and inspect for a water-break free surface. Rinse with fresh ethanol and air dry.

Clean aluminum coupons until completely free of water-breaks. Immerse the coupons with occasional agitation in room temperature TCE for 15 minutes, followed by rinsing coupons with fresh TCE twice. Air dry. Immerse the coupons for one minute in 1.42 specific gravity nitric acid. Rinse with water until no residual acid is present. Inspect for water-break free surface. Hot air dry.

Specimens of cellulosic insulation submitted for testing shall be blown, combed, or otherwise mixed to reasonably assure homogeneity in the cellulosic insulation test specimens.

Before presaturating each 20 g (0.7 oz) test specimen, subdivide it into two 10g portions. The quantity of distilled water to be used for each 10g (.35 oz) portion shall be determined using the following formula:

$$\text{ml distilled water} = \frac{40}{\text{settled density}} \times 75$$

Kg/m³

OR

$$\frac{2.5}{\text{settled density}} \times 75$$

lbs/ft³

Presaturate each 10g (.35 oz) portion with the determined amount of water. Place one presaturated 10g (.35 oz) portion into a crystallizing dish, tamp level using the bottom of a clean suitably sized glass beaker. Place a metal coupon onto the presaturated insula-

tion portion and center it in a horizontal plane. Place the other presaturated 10g (.35 oz) portion into the crystallizing dish on the metal coupon and tamp the composite specimen (metal coupon plus saturated insulation in the crystallizing dish) to assure an even distribution of this material and

to assure good contact of the insulation with the metal.

Do not cover the crystallizing dish. (Care should be taken to avoid evaporation from the composite specimen while it is being prepared until it is placed in the humidity chamber.) If dripping occurs in the chamber, position a drip guard in the chamber to divert condensation to the chamber floor. Repeat the above for the other metal coupons. Place all six composite specimens into the humidity chamber. The chamber shall be preconditioned to $48.9 \pm 1.7^{\circ}\text{C}$ ($120 \pm 3^{\circ}\text{F}$) and 97 ± 1.5 percent relative humidity. The specimens shall remain in the chamber for 336 ± 4 hours. (Keep openings of the chamber door to a minimum while placing composite specimens in and removing them from the chamber.)

Upon completion of the test disassemble the composite specimens. Thoroughly wash the metal coupons under running water and lightly brush them using a nylon bristle brush or equivalent to remove loose corrosion products. Remove the remaining corrosion products from the metal coupons by cleaning them in accordance with recommended practices identified in ASTM G1—Standard Recommended Practice for Preparing, Cleaning, and Evaluation Corrosion Test Specimens.

After cleaning, examine the metal coupons over a 40-w appliance light bulb for perforation.

(iii) *Noncorrosiveness*. Noncorrosiveness shall be determined by the absence of any perforations, excluding notches which extend into the coupon 1 mm or less from any edge, when the coupons are observed over a 40-w appliance light bulb.

(10) *Test method for fungi resistance*.

(i) Follow MIL-STD-810, method 508, except that spore suspensions shall be prepared using distilled water and that the core of $\frac{1}{2}$ inch regular gypsum wallboard shall be used as the control.

(ii) Examine the test samples of insulation and the control at 40X magnification for evidence of fungal growth.

(iii) Ascertain whether any of the test samples show more fungal growth than the control.

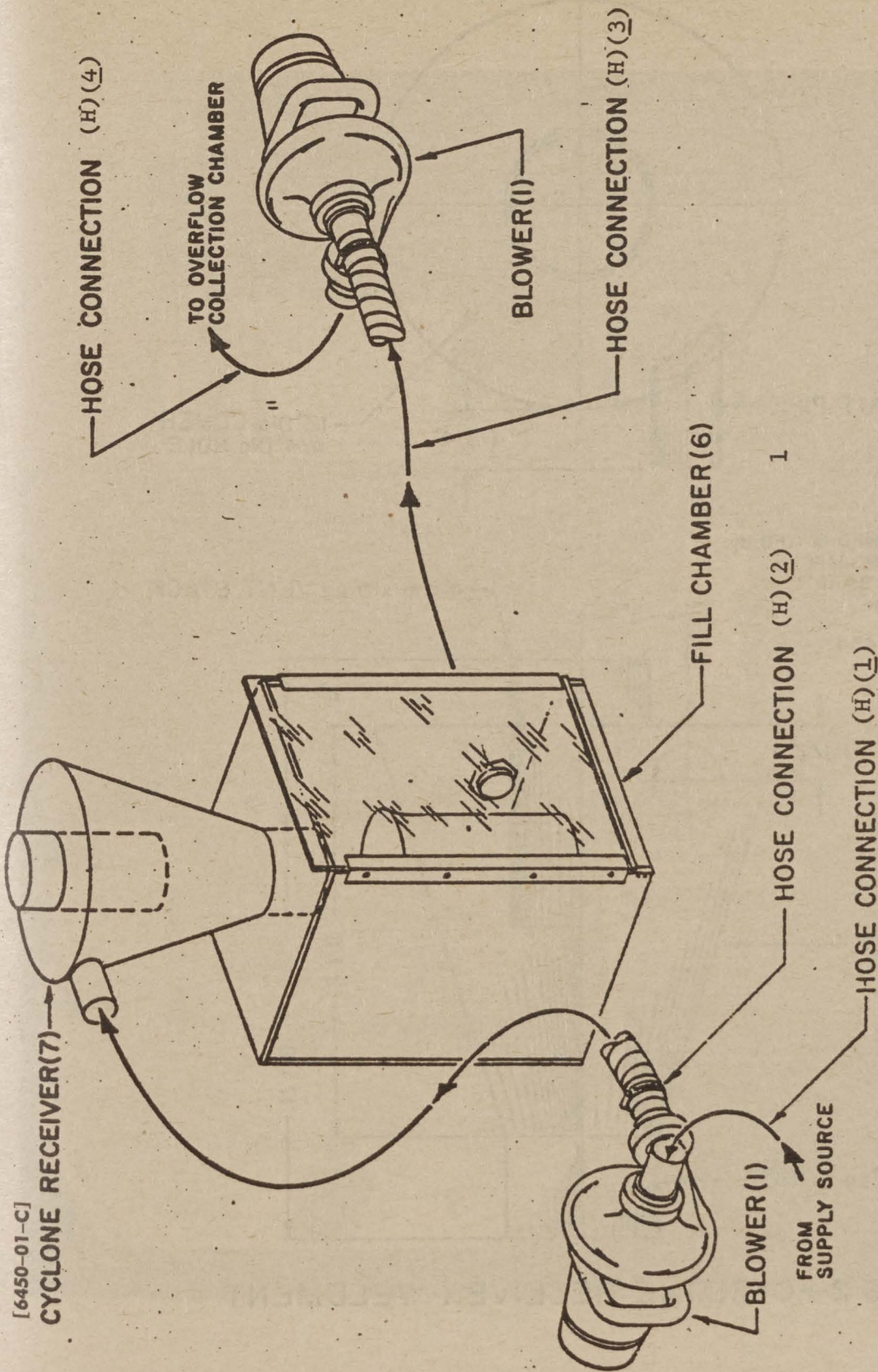
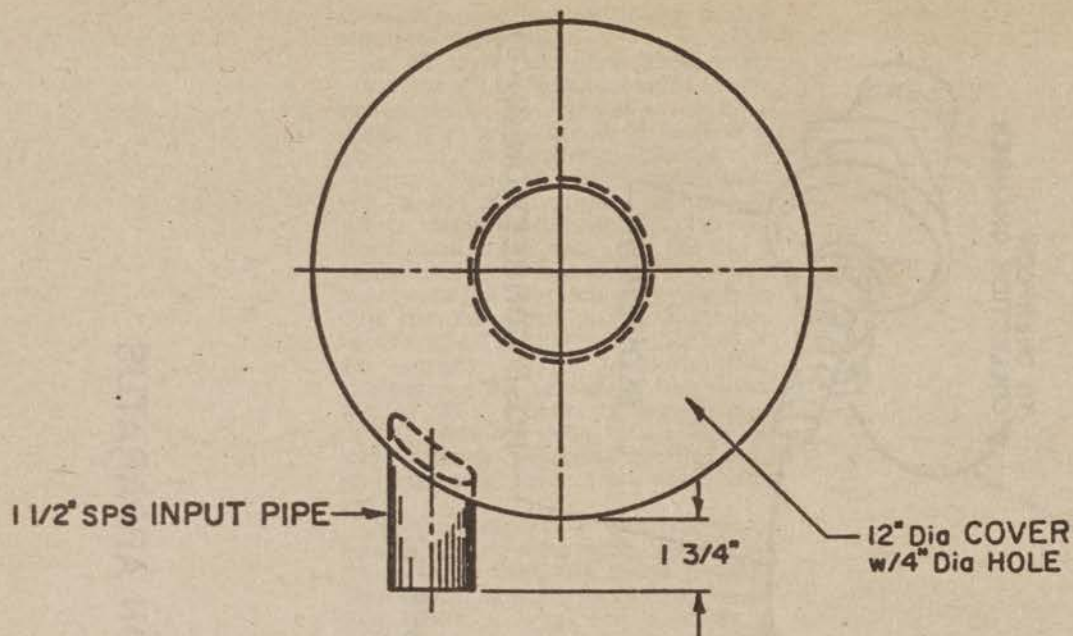


FIG 1-PARTIAL INSULATION PREPARATION APPARATUS

PROPOSED RULES



This Unit DESIGNED & MFD By:
HAMMERLUND MFG Co.
607 2ND ST. South
HOPKINS, MN.
55343
(612) 935-3454

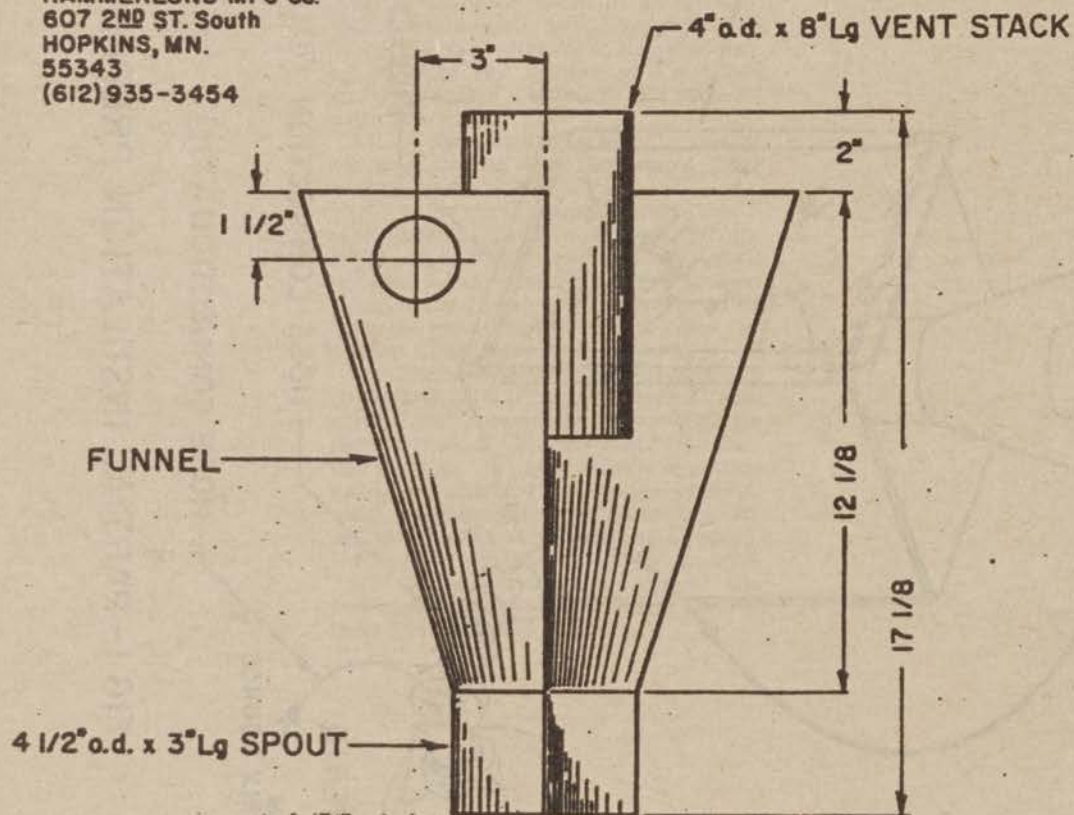


FIG 2—CYCLONE RECEIVER WELDMENT

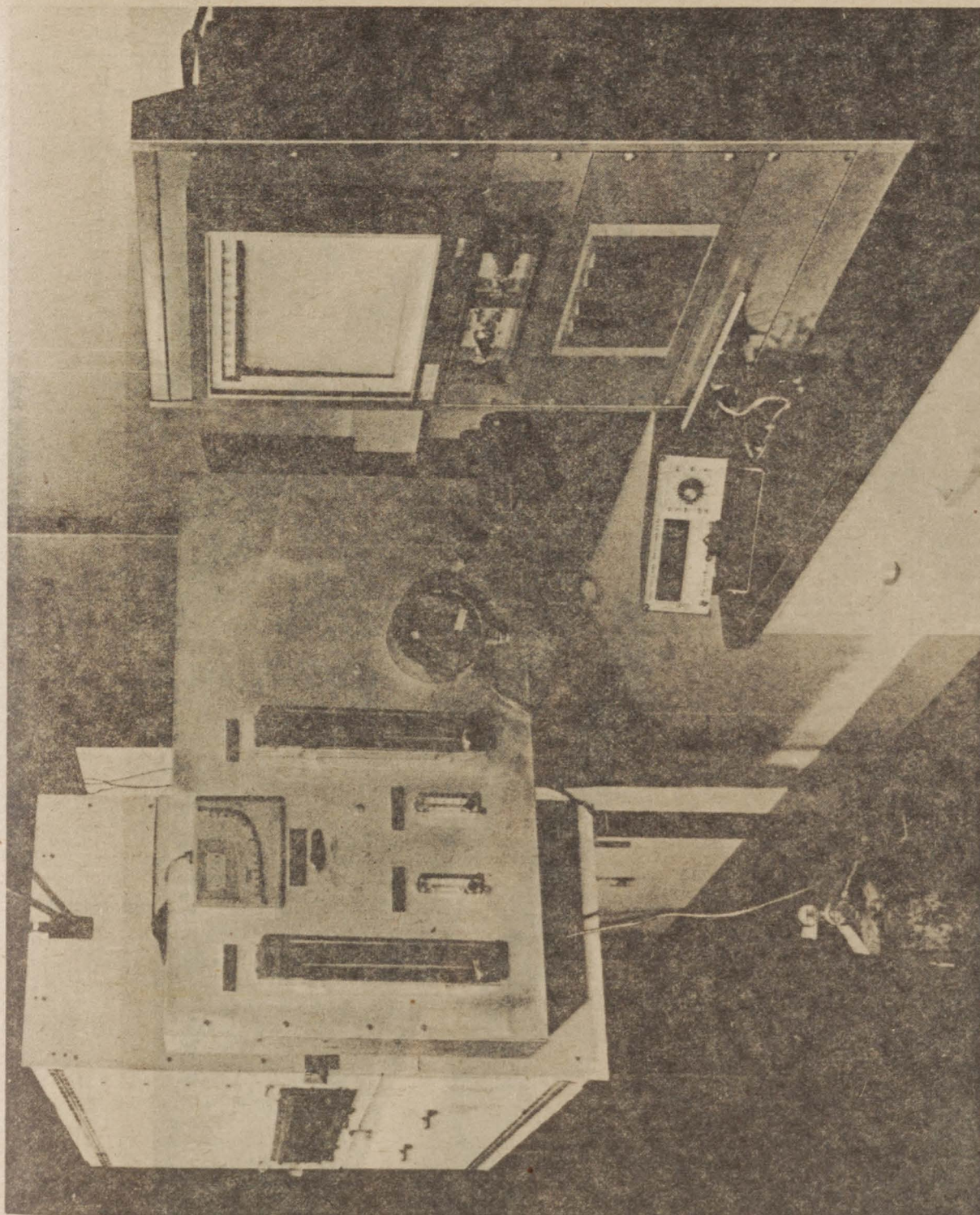


Figure 3

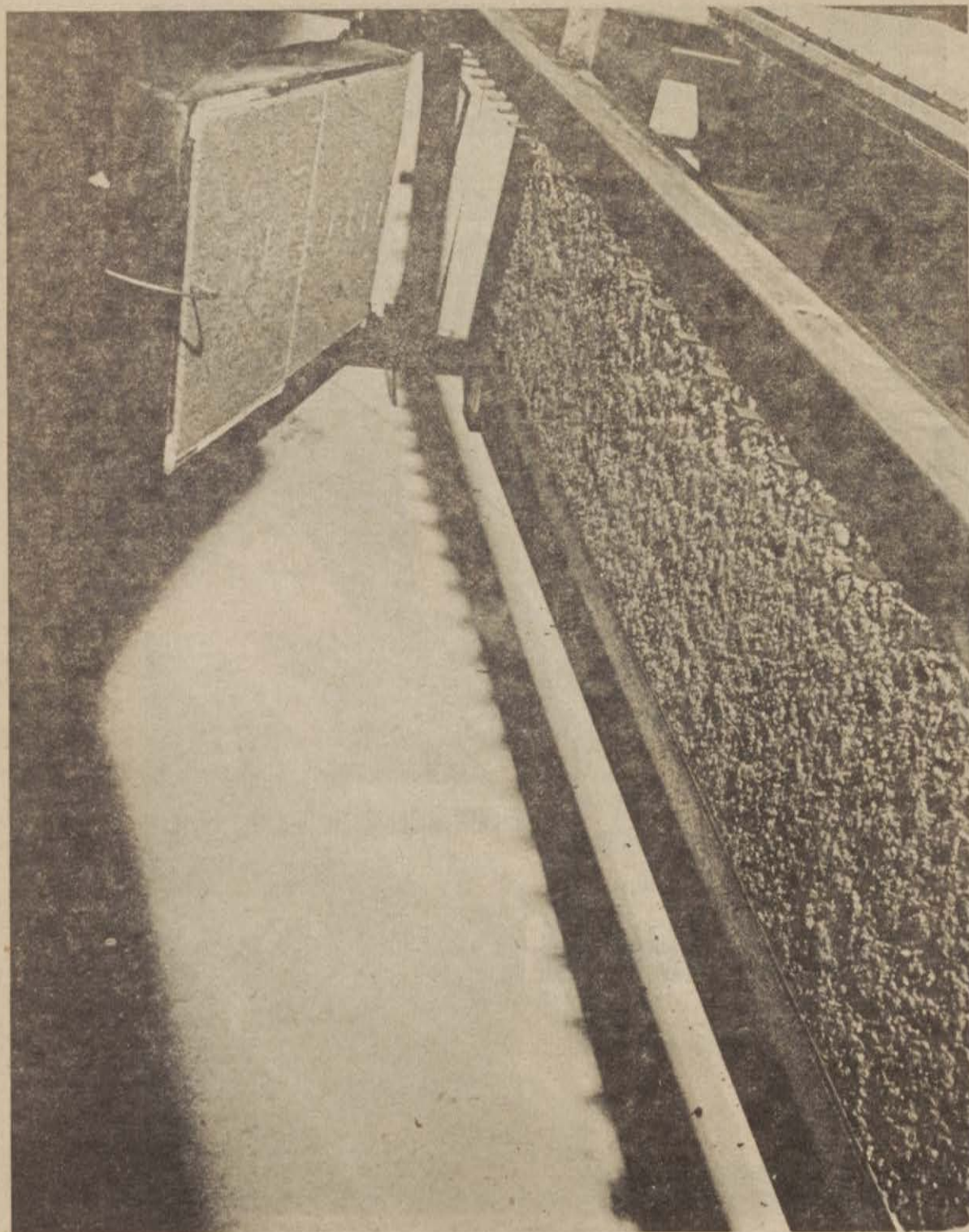
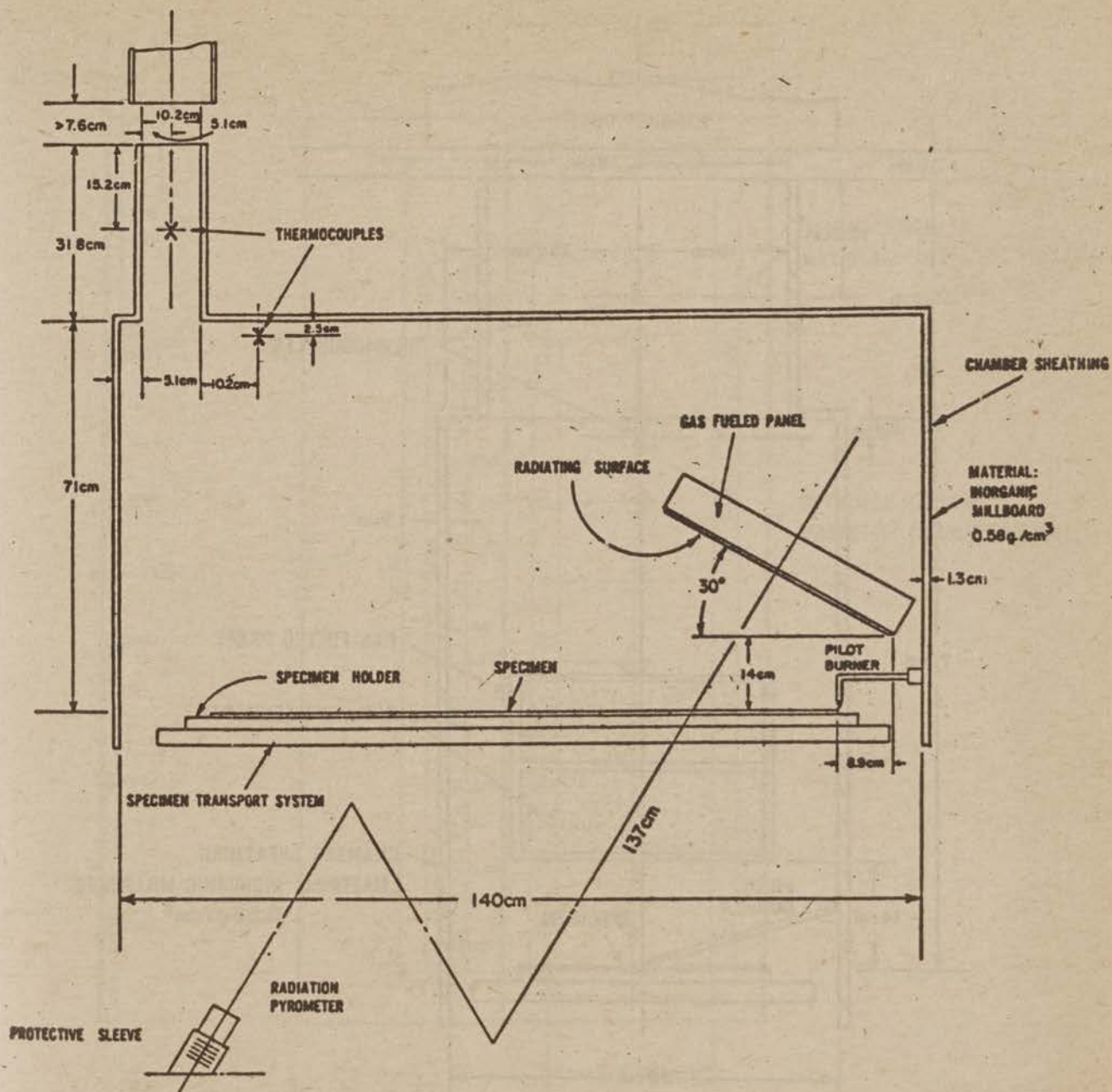
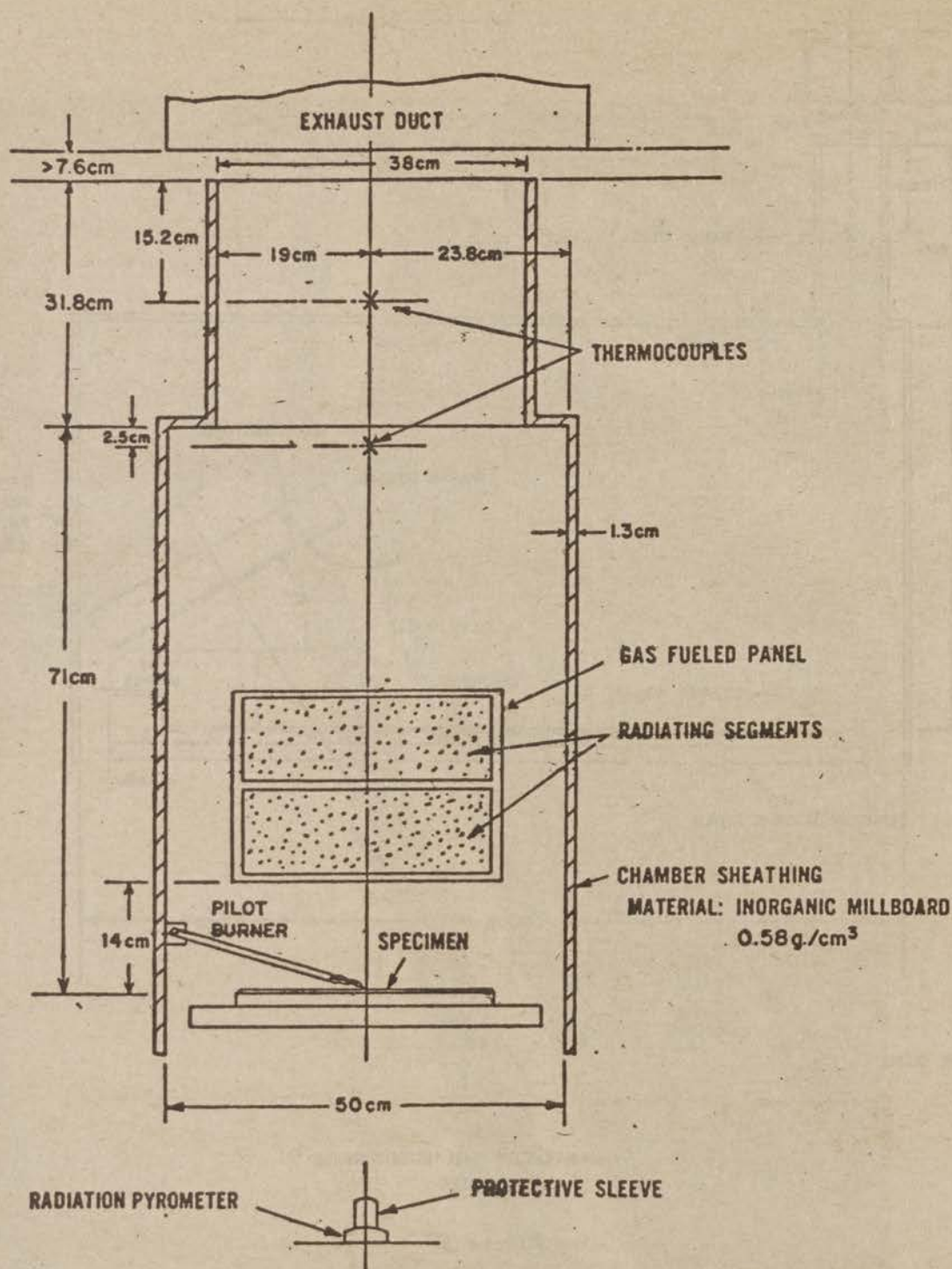


Figure 4



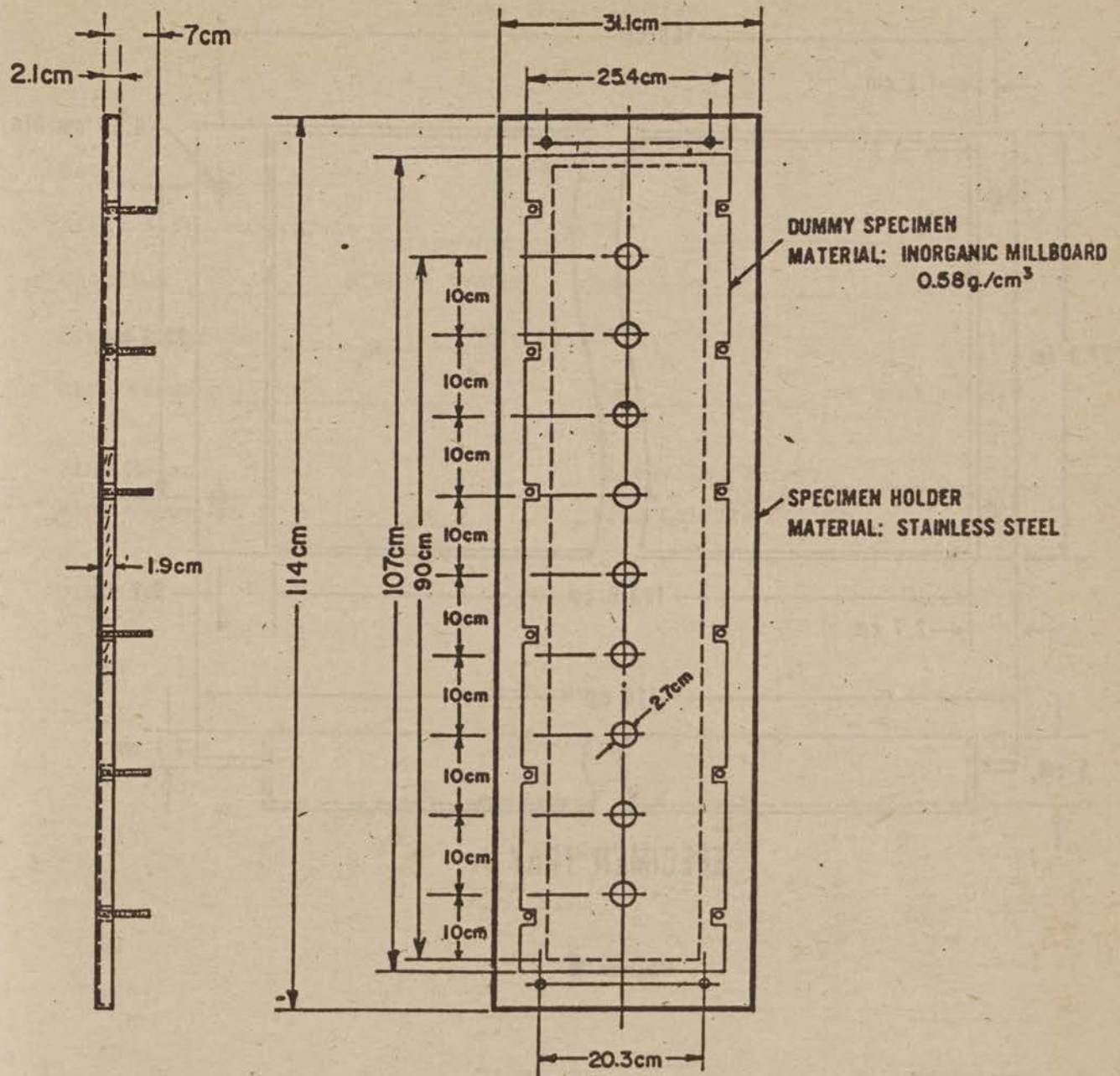
FLOORING RADIANT PANEL TESTER SCHEMATIC
SIDE ELEVATION

Figure 5



FLOORING RADIANT PANEL TESTER SCHEMATIC
LOW FLUX END, ELEVATION

Figure 6



DUMMY SPECIMEN IN SPECIMEN HOLDER

Figure 7

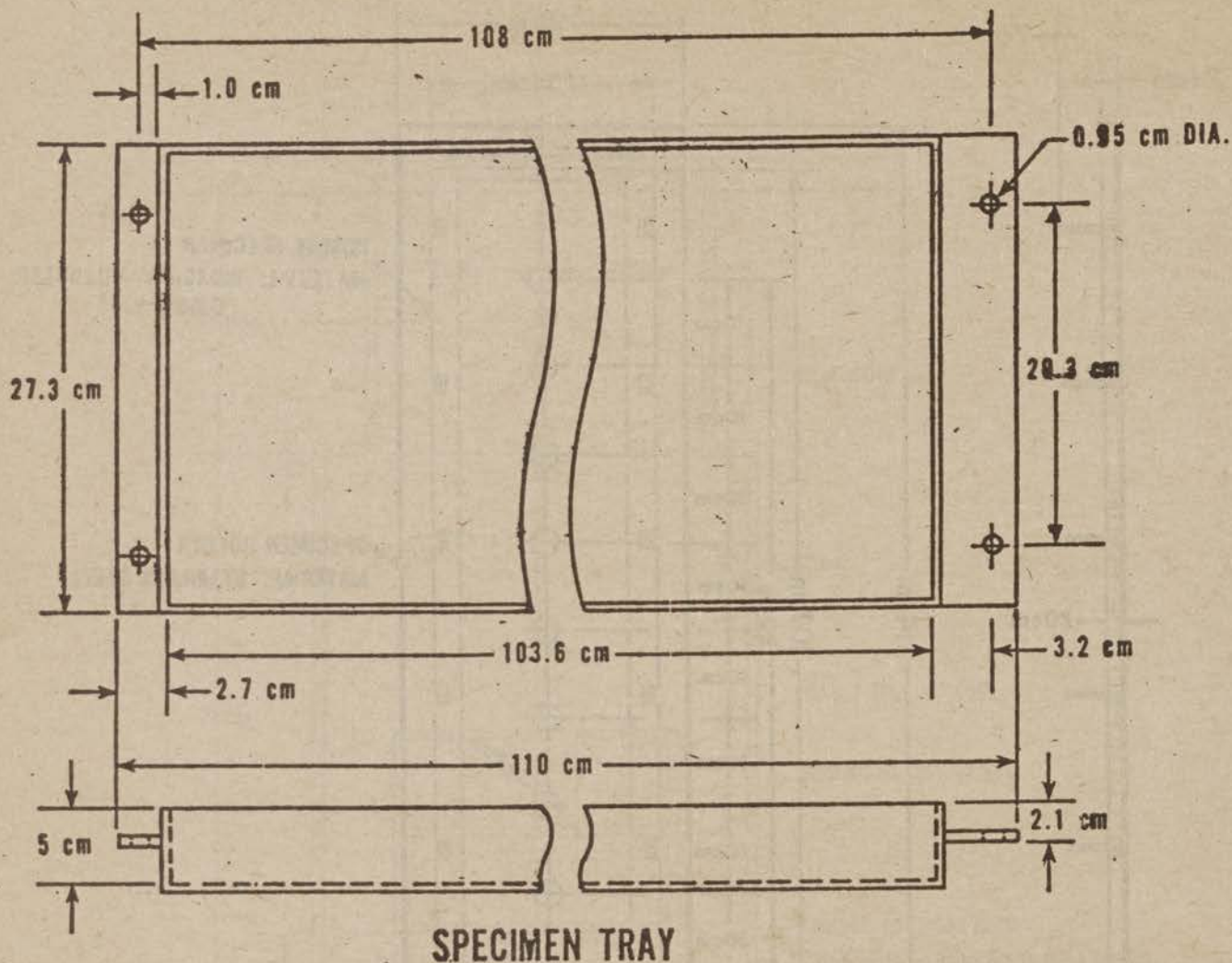


Figure 8

RADIANT FLUX PROFILE

Date _____

Black Body Temperature _____ R.V. _____ °C (°F)

Gas Flow _____ NTPm^3H (SCFH) Air Flow _____ NTPm^3H (SCFH)

Room Temperature _____ °C (°F)

Air Pressure _____ Gas _____ cm (in) of H_2O

Flux Meter

Conversion Factor _____

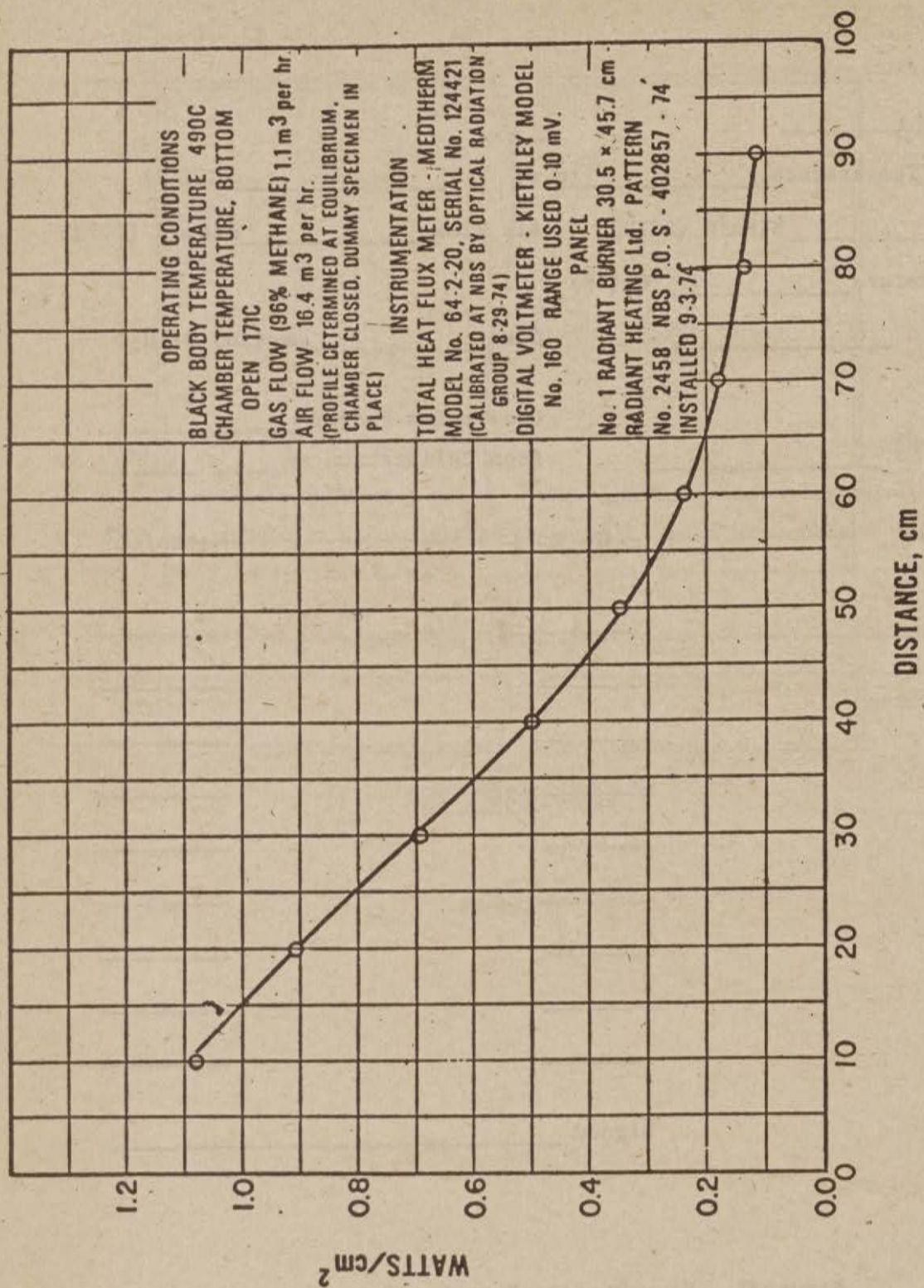
Radiometer No. _____

from Calibration on _____

Distance (cm)	MV	Watts/cm ²
10	_____	_____
20	_____	_____
30	_____	_____
40	_____	_____
50	_____	_____
60	_____	_____
70	_____	_____
80	_____	_____
90	_____	_____

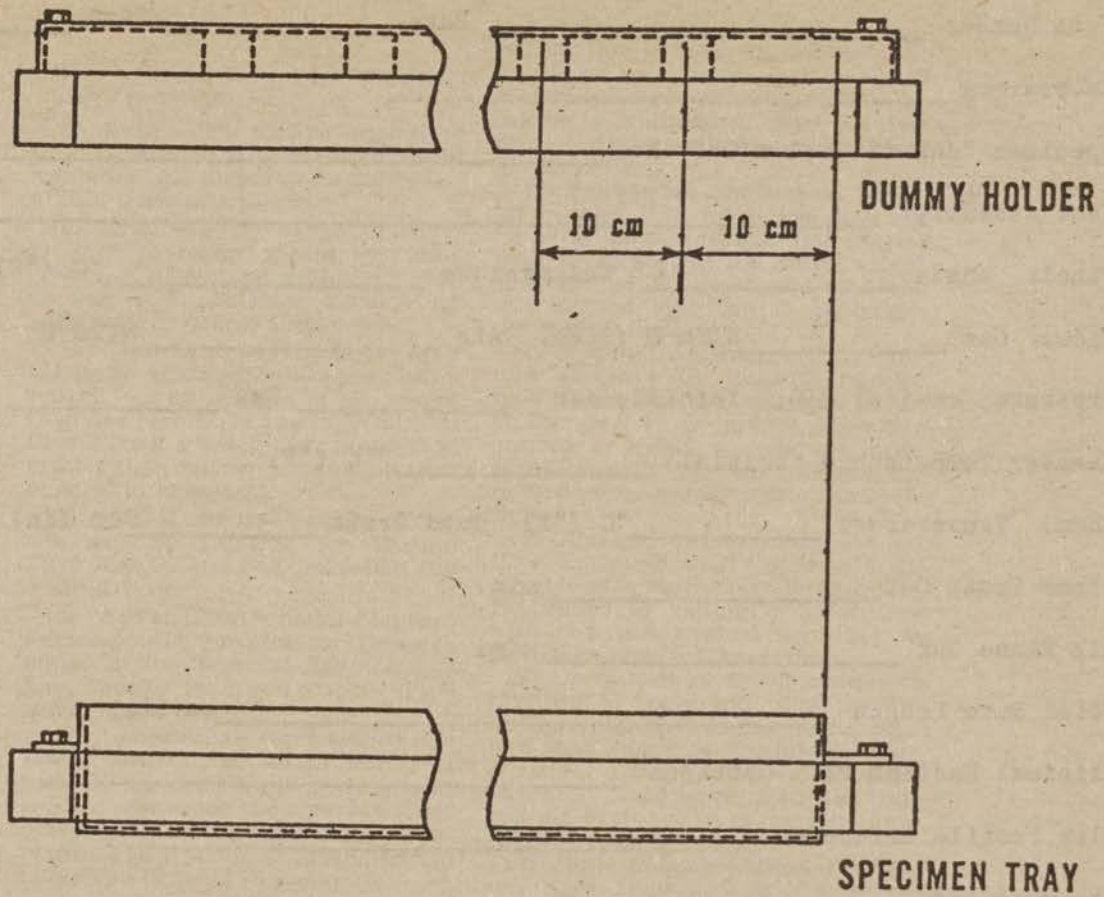
Signed _____

Figure 9. Flux Profile Data Log Format



STANDARD RADIANT HEAT ENERGY FLUX PROFILE

Figure 10



SPECIMEN TRAY MOUNTING POSITION

Figure 9/

Test Number _____ Date _____ Time _____
Laboratory _____
Specimen Identification/Code No. _____
Test Assembly: _____
Panel: Angle _____ ° Temperature _____ °C (°F)
Flow: Gas _____ NTPm³H (SCFH) Air _____ NTPm³H
Pressure, cm (in) H₂O: Initial, Air _____ Gas _____
Chamber Temperature (Initial) _____ °C (°F)
Room: Temperature _____ °C (°F) Hood Draft _____ cm (in) water
Flame Front Out _____ min.
All Flame Out _____ min.
Total Burn Length _____ cm (in)
Critical Radiant Flux watts/cm² _____
Flux Profile Reference _____
Observations:

Signed _____

Figure 12. Insulation Radiant Panel Test Data Log Format

[6450-01-M]

§ 456.804 Standards for loose-fill mineral fiber insulation.

(a) *Scope.* This section applies to Class A loose-fill mineral fiber thermal insulation and Class B loose-fill mineral fiber thermal insulation.

(b) *Definitions.* (1) "Loose-fill mineral fiber insulation" means insulation composed of mineral substances such as slag, rock, or glass, suitable for pneumatic or poured application.

(2) "Class A" loose-fill mineral fiber insulation is mineral fiber that has a weight loss on ignition of no greater than one percent. "Class B" is mineral fiber having a weight loss on ignition greater than one percent but less than or equal to 12 percent.

(3) "ASTM C 553" means ASTM Standard Specification for Mineral Fiber Blanket and Felt Insulation (Industrial Type).

(4) "ASTM C 687" means Standard Recommended Practice for Determination of the Thermal Resistance of Low Density Fibrous Loose-fill Type Building Insulation.

(c) *Physical requirements—*(1) *Design density.* The design density of loose-fill mineral fiber insulation to be used in computing the coverage chart (Table II) shall be determined in accordance with the method specified in paragraph (d)(1) of this section.

(2) *Thermal resistance.* The thermal resistance (R-value) of loose-fill mineral fiber to be used in computing the coverage chart (Table II) shall be determined in accordance with the test method specified in paragraph (d)(2) of this section. The R-value for any given sample of loose-fill mineral fiber insulation shall not average more than five percent below the listed R-value for any loose-fill insulation.

(3) *Fire safety—*(i) *Weight loss on ignition.* The weight loss on ignition of Class A loose-fill mineral fiber insulation shall be no greater than one percent. The weight loss on ignition of Class B loose-fill mineral fiber insulation shall be no greater than 12 percent. This shall be verified by testing in accordance with the test method described in paragraph (d)(3) of this section.

(ii) *Critical radiant flux.* The critical radiant flux of loose-fill mineral fiber insulation shall be no less than 0.12 Watts/cm². This shall be verified by testing in accordance with the test method described in paragraph (d)(3) of this section.

(iii) *Smoldering combustion.* Loose-fill mineral fiber insulation shall not flame or show a weight loss greater than 15 percent of the initial weight when tested in accordance with the test method described in paragraph (d)(4) of this section.

(4) *Moisture adsorption.* The moisture adsorbed by loose-fill mineral fiber insulation from exposure to humidity shall be no greater than five percent by weight when tested in accordance with the test method described in paragraph (d)(6) of this section.

(5) *Odor emission.* Loose-fill mineral fiber insulation shall not have a detectable odor which could be found objectionable by testing in accordance with the test method described in paragraph (d)(7) of this section.

(6) *Corrosiveness.* Under conditions specified in paragraph (d)(8) of this section, loose-fill mineral fiber insulation shall cause no greater corrosion of metal than sterile cotton when tested in accordance with the test method described in paragraph (d)(8) of this section.

(7) *Fungi resistance.* Loose-fill mineral fiber insulation shall show no more fungal growth than the control material would show by testing in accordance with paragraph (d)(9) of this section.

(8) *Marking.* Each bag of insulation shall be marked with the following information:

(i) Name of manufacturer.

(ii) Recommended method of application (blowing or pouring).

(iii) Minimum net weight of insulation.

(iv) Table II filled in to show manufacturer's recommended insulation thickness and maximum coverage per bag for specified thermal resistance values.

Where the insulation is intended for application by either blowing or pouring, the bag shall have a separate coverage chart for each type of application.

TABLE II COVERAGE CHART

To Obtain Thermal Resistance* (R-Value) of	Minimum Number of Bags per 1000 Sq.Ft. (MSF)	Installed Insulation Should Not Be Less Than:	Maximum Sq.Ft. Coverage per Bag	The weight per Sq.Ft. of Installed Insulation Should Be Not Less Than**
ATTIC				
R-40	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-32	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-24	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-19	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
R-13	bags/MSF	inches thick	sq. ft.	lbs/sq.ft.
SIDEWALLS				
R-__	bags/MSF	2 inches thick (nominal)	sq. ft.	lbs/sq.ft.
R-__	bags/MSF	4 inches thick (nominal)	sq. ft.	lbs/sq.ft.
R-__	bags/MSF	6 inches thick (nominal)	sq. ft.	lbs/sq.ft.

* At 75°F Mean Temperature

** Based on settled density as determined in (d) (1)

[6450-01-M]

(v) The following warning:

Clearance around heat sources: Recessed lights and certain electrical devices require clearances from insulation material. Do not install within three inches of these devices.

Skin irritation: During installation, insulation material can cause some local skin irritation; protect skin by wearing loose clothing, including gloves. Wash work clothing separately from other clothing.

Eye and lung protection: To prevent irritation to eyes and lungs from fibers which may become airborne during installation, a dust mask and goggles are suggested.

(d) *Test methods*—(1) *Test method for design density.* [Reserved]

(2) *Test method for thermal resistance.* (i) Perform all testing at a mean temperature of 23.9°C (75°F).

(ii) Prepare the insulation to be tested by following the test method for design density at paragraph (d) (1) of this section.

(iii) Determine the thermal conductance of four samples in accordance with either ASTM C 177, C 518 or C 236. In case of a question, ASTM C 177 shall be used to determine the thermal conductance of the standard reference material used to calibrate the C 518 or C 236 apparatus. Alternatively, ASTM C 687 may be used except that density shall be determined in accordance with paragraph (d)(1) of this section.

(iv) Calculate the thermal resistance (R-value) of each sample by taking the reciprocal of each sample's thermal conductance.

(v) Calculate the arithmetic average of the R-values of the four samples. This arithmetic average is the thermal resistance (R-value) of the loose-fill mineral fiber insulation which has been tested.

(3) *Test method for weight loss on ignition.* (i) Heat insulation specimen in an oven at 104°C (220°F) for 30 minutes to remove moisture.

(ii) Place a 10.00 gm specimen in a porcelain crucible of known weight. Place the crucible in a cool muffle furnace and heat at 427°C (800°F) for two hours.

(iii) Remove the crucible from the furnace and cool to room temperature. Weigh the crucible containing the specimen and deduct the tare weight of the crucible.

(iv) Ascertain whether the specimen weighs less than 99.0 percent of the weight determined in paragraph (B) if it is Class A loose-fill mineral fiber insulation. Ascertain whether it weighs less than 88.0 percent if it is Class B insulation.

(4) *Test method for critical radiant flux.* See § 456.803(d)(3). Perform the

test at the design density as determined in § 456.804(d)(1).

(5) *Test method for smoldering combustion.* See § 456.803(d)(4). Perform the test at the design density as determined in § 456.804(d)(1).

(6) *Test method for moisture adsorption.* Moisture adsorption shall be determined in accordance with the test method specified in ASTM C 553.

(7) *Test method for odor emission.* (i) Apparatus. Stainless steel or glass containers with all metallic lids, containers and lids to produce no odor or their own.

(ii) Soak a 50 gm test specimen in distilled water at a temperature of 65°C (150°F) for 30 minutes in a closed container.

(iii) Have a panel of five persons with normal odor perception examine the test specimen for odor using the following questions:

(A) Was there an odor?

(B) If so, was the odor objectionable, pleasant or otherwise?

(C) If objectionable, was the odor weak, strong or very strong?

(iv) The test specimen shall be determined to have an objectionable odor if a majority of the panel finds an objectionable odor which is strong or very strong.

(8) *Test method for corrosiveness.* Perform this test at the design density as determined in § 456.804(d)(1).

(i) *Apparatus and materials.* (A) Humidity chamber capable of maintaining 49±1°C (120±3°F) and a relative humidity of 95±3 percent.

(B) Two steel plates, 2.54 by 10.2 cm (1 × 4 in.) and .51 mm (.020 inches) thick, bright No. 2 finish, cold rolled strip steel, quarter hard, temper No. 3.

(C) Four woven wire screens, 3.8 × 11.4 cm (1.5 × 4.5 inch), 1.1 cm (7/16 inch) open square grid, made of 1.6 mm (0.63 inch) wire, 304 stainless steel.

(D) Four No. 12 rubber bands.

(E) Two pieces of sterile cotton, 3.8 × 11.4 cm.

(ii) *Preparation.* Prepare two insulation specimens, each 3.8 × 11.4 cm (1.5 × 4.5 inch) by 12.7 m (0.5 inch) thick when compressed against the metal test plates as described in the subparagraph below. Clean the steel plates until completely free of water breaks by vapor degreasing for five minutes followed by bathing them in hot caustic bath of 15 percent KOH solution for 15 minutes. Rinse the plates thoroughly in distilled water and immediately dry. Solvent extract the sterile cotton in ACS reagent grade acetone for 48 hours and vacuum dry at low heat.

(iii) Place one steel plate between the two insulation specimens, compress between two wire screens, and secure with a rubber band at each end.

(iv) Place the other steel plate between the pieces of cotton and secure as in the preceding paragraph.

(v) Vertically suspend both the insulation-covered and cotton-covered plates in the humidity chamber and maintain at 49±1°C (120±3°F) and 95±3 percent relative humidity for 168±4 hours.

(vi) Upon completion of these procedures, remove both steel plates and ascertain whether the plate which had been insulation covered shows more corrosion than the plate which had been cotton covered.

(9) *Test method for fungi resistance.*

(i) Follow MIL-STD-810, method 508, except that spore suspension shall be prepared using distilled water and that the core of 1/2 inch regular gypsum wallboard shall be used as the control.

(ii) Examine the test samples of insulation and the control at 40X magnification for evidence of fungal growth.

(iii) Ascertain whether any of the test samples show more fungal growth than the control.

§ 456.805 Standards for Mineral Fiber Blanket and Batt Thermal Insulation

(a) *Scope.* This section applies to mineral fiber blanket and batt thermal insulation.

(b) *Classification.* Two types of mineral fiber blanket and batt insulation are defined. They are

Type I—Blankets and batts with no membrane covering

Type II—Blankets and batts with a reflective or non-reflective membrane covering on one principal face.

(c) *Applications.* Mineral fiber blanket and batt thermal insulation is suitable for the following areas of application:

(1) Open attic floors;

(2) Enclosed spaces;

(3) Ceilings of unheated basements and crawl spaces.

(d) *Definitions.* (1) "Mineral fiber blanket and batt thermal insulation" means flexible units composed of felted inorganic fibers in rolls or strips, with or without attached membrane coverings.

(2) "ASTM C 553" means ASTM Standard Specification for Mineral Fiber Blanket and Felt Insulation.

(3) "ASTM C 653" means ASTM Method for Determination of the Thermal Resistance of Low-Density Mineral Fiber Blanket-Type Building Insulation.

(e) *Physical Requirements*—(1) *Thermal resistance.* The R-value for any given sample of mineral fiber blanket and batt thermal insulation shall not be more than five percent below the arithmetic average of the R-values of four specimens tested in accordance with the test method described in paragraph (f)(1) of this section.

(2) *Fire safety*—(i) *Critical radiant flux*. The critical radiant flux of Type I and II mineral fiber blanket and batt thermal insulation shall be not less than 0.12 watts/cm². This shall be verified by testing in accordance with the test method described in § 456.803(d)(3).

(ii) *Smoldering combustion*. Mineral fiber blanket and batt thermal insulation (both types I and II) shall not flame or show a weight loss greater than 15 percent of the initial weight when tested in accordance with § 456.803(d)(4).

(3) *Vapor permeance*. (i) Vapor resistance membrane coverings on mineral fiber blanket and batt thermal insulation shall have a vapor permeance of not more than 1.0 perm. This shall be verified by testing in accordance with the test method described in paragraph (f)(4) of this section.

(ii) Vapor permeable membrane coverings on mineral fiber blanket and batt thermal insulation shall have a vapor permeance of not less than five perms. This shall be verified by testing in accordance with the method described in paragraph (f)(4) of this section.

(4) *Dimensional data*—(i) *Thickness*. The thickness of mineral fiber blanket and batt thermal insulation shall be not less than that required to provide the thermal resistance value specified.

(ii) *Tolerances*. The dimensional tolerance on a specified length of mineral fiber blanket or batt thermal insulation shall be 12.7 mm (0.5 inch) for blankets 254 cm (100 inches) or shorter, and 0.5 percent for blankets longer than 254 cm. The tolerance on a specified width shall be 12.7 mm (0.5 inch).

(5) *Moisture adsorption*. The moisture adsorbed by mineral fiber blanket and batt thermal insulation from exposure to humidity shall be no greater than five percent by weight when tested in accordance with the test method described in paragraph (f)(5) of this section.

(6) *Odor emission*. Mineral fiber blanket and batt thermal insulation shall not have a detectable odor which would be found objectionable by testing in accordance with the test method described in paragraph (f)(6) of this section.

(7) *Corrosiveness*. Under conditions specified in paragraph (f)(7) of this section mineral fiber blanket and batt thermal insulation shall cause no greater corrosion of metal than sterile cotton. This shall be verified by testing in accordance with the test method specified in paragraph (f)(7) of this section.

(8) *Fungi-resistance*. Mineral fiber blanket and batt thermal insulation

shall show no evidence of fungal growth when tested in accordance with the method described in paragraph (f)(8) of this section.

(9) *Identification marking*—(i) *Insulation blankets*. Mineral fiber blanket and batt thermal insulation shall be marked with the manufacturer's name or trademark, the thermal resistance (R-value) of the insulation and the thickness required to obtain this thermal resistance R-value. On each Type I insulation blanket, the identification marking shall be printed on a label, branded, or indelibly marked at intervals not exceeding eight linear feet. On Type II insulation blankets, the identification marking shall be printed on the membrane covering at intervals not exceeding eight linear feet. Identification marking on Types I and II blankets shall also contain the following warning:

Clearance around heat sources: Receded lights and certain electrical devices require clearances from insulation material. Do not install within three inches of these devices.

Skin irritation: during installation, insulation material can cause some local skin irritation; protect skin by wearing loose clothing, including gloves. Wash work clothing separately from other clothing.

Eye and lung protection: To prevent irritation to eyes and lungs from fibers which may become airborne during installation, a dust mask and goggles are suggested.

In addition to the above warning, identification marking on Type II blankets shall contain this warning:

"Caution—This membrane covering is flammable. When installed, it should not be exposed."

(ii) *Shipping bags and wrapping*. Shipping bags and wrapping for insulation blankets shall be marked with the manufacturer's name or trademark, the length, width, thickness, the R-value of the insulation, the square feet of insulation, and the type.

(iii) *Shipping containers*. Shipping containers for insulation blankets shall be marked with the manufacturer's name or trademark, the length, width, and the R-value of the insulation.

(f) *Testing methods*—(1) *Test method of thermal resistance*. Thermal resistance shall be determined in accordance with ASTM C 177, C 236, C 518, or C 653.

(2) *Test method for critical radiant flux*. See § 456.803(d)(3). Type II blankets shall be tested with the membrane covering faced down in the tray. When Type II blankets are furnished with breather paper, the insulation shall be tested with the breather paper faced up in the tray.

(3) *Test method for smoldering combustion*. See § 456.803(d)(4). Test the mineral fiber blanket without the membrane covering.

(4) *Test method for vapor permeance*. Vapor permeance shall be determined in accordance with procedure A of ASTM E 96.

(5) *Test method for moisture adsorption*. Moisture adsorption shall be determined in accordance with ASTM C 553 Section 15.

(6) *Test method for odor emission*. See § 456.804(d)(7).

(7) *Test method for Corrosiveness*. See § 456.804(d)(8).

(8) *Test method for fungi resistance*. See § 456.804(d)(9).

§ 456.806 Standards for vermiculite thermal insulation.

(a) *Scope*. This section applies to expanded or exfoliated vermiculite thermal insulating material, Types I and II. (Depending on grading values given in Table III.)

(b) *Definitions*. (1) "ASTM C 136" means ASTM Standard Test Method for Sieve or Screen Analysis of Fine and Coarse Aggregates.

(2) "ASTM C 520" means ASTM Standard Test Method for Density of Granular Loose-Fill Insulation.

(c) *Physical requirements*—(1) *Thermal resistance*. Vermiculite thermal insulation shall have a thermal resistance (R-value) for a mean temperature of 24° C (75° F) of not less than 2.0 ft²·hr·°F/Btu per inch thickness. This shall be verified by testing in accordance with paragraph (d)(1) of this section.

(2) *Combustibility*. When tested in accordance with the method described in paragraph (d)(2) of this section, vermiculite shall not spark or ignite.

(3) *Water repellency*. When tested in accordance with the method described in paragraph (d)(3) of this section, vermiculite shall repel 175 ml of water.

(4) *Density*. The two types of vermiculite insulation shall have densities within the ranges specified in Table III. This shall be verified by testing in accordance with paragraph (d)(4) of this section.

TABLE III

Size designation:	Density Kg/m ³ (lb/ft ³)	
	Minimum	Maximum
Type 1.....	56 (3.5)	112 (7.0)
Type 2.....	64 (4.0)	128 (8.0)

(5) *Grading*. The two types of vermiculite insulation shall be graded according to the value listed in Table IV. This shall be verified by testing in accordance with paragraph (d)(5) of this section.

TABLE IV.—Grading Values

[Accumulative Percentages (by Weight) Retained on Sieves Having Square Holes]

Size designation	No. 10 (2.0mm)		No. 20 (0.85mm)		No. 40 (0.425mm)		No. 60 (0.25mm)		No. 100 (0.15mm)		No. 200 (0.075mm)	
	min	max	min	max	min	max	min	max	min	max	min	max
Type 1.	0	40	30	90	65	98	85	100	90	100	97	100
Type 2.	0	40	0	5	20	80	75	99	90	100	97	100

(d) *Test methods*—(1) *Test method for thermal resistance*. The thermal resistance of vermiculite insulation shall be determined in accordance with ASTM C 177, C 236 or C 518.

(2) *Test method for combustibility*. Hold the vermiculite sample in a suitable fixture and position it in direct contact with the flame of a Bunsen burner for 13 seconds. Ascertain whether there is any sparking or ignition.

(3) *Test method for water repellency*—(i) *Apparatus*. A rigid plastic tube, 5.1 cm (2 in.) inner diameter, 30.5 cm (12 in.) long, with a 16 mesh plastic screen covering firmly fastened to the bottom end, and marked 19.6 cm (7.7 in.) from the screen covered end, a large rubber stopper, a 500 ml glass beaker, and a 500 ml graduated cylinder.

(ii) Fill the tube with vermiculite insulation up to the 19.6 cm mark. Compact the insulation by dropping the tube from a height of 8 cm (approx. 3.2 in.) onto the rubber stopper ten times. Add sufficient insulation to keep the tube filled to within 1 cm of the 19.6 cm mark.

(iii) With the tube supported vertically above the empty beaker, rapidly pour 250 ml of water into the tube. Allow three minutes for the water to drain through the specimen, then tilt the tube 45° to drain water collected on the screen.

(iv) Measure the volume of water collected in the beaker, and record. Repeat this test for three samples. Ascertain whether the arithmetic average of the three measurements is less than 175 ml.

(4) *Test method for density*. The density of vermiculite insulation shall be determined in accordance with ASTM C 520.

(5) *Test method for grading*. The size of vermiculite shall be determined in accordance with ASTM C 136.

§ 456.807 Standards for perlite thermal insulation.

(a) *Scope*. This section applies to loose-fill perlite thermal insulation.

(b) *Definitions*. (1) "ASTM C 136" means ASTM Standard Method for Sieve or Screen Analysis of Fine and Coarse Aggregates.

(2) "ASTM C 520" means ASTM Standard Method of Test for Density of Granular Loose-Fill Insulation.

(c) *Physical requirements*—(1) *Thermal resistance*. Loose-fill perlite insulation shall have a thermal resistance (R-value), for a mean temperature of 24° C (75° F), of not less than 2.6 ft²-hr-°F/Btu per inch thickness. This shall be verified by testing in accordance with the test method described in paragraph (d)(1) of this section.

(2) *Water repellency*. When tested in accordance with the method described in paragraph (d)(2), of this section, perlite insulation shall repel 175 ml of water.

(3) *Density*. Perlite insulation shall have a density of not less than 80.1 Kg/m³ (5 lb/ft³), nor more than 128.1 Kg/m³ (8 lb/ft³). This shall be verified by testing in accordance with the test method described in paragraph (d)(3) of this section.

(4) *Solvent solubles*. Perlite insulation shall contain not more than 0.1 percent by weight of solvent solubles. This shall be verified by testing in accordance with the test method described in paragraph (d)(4) of this section.

(5) *Grading*. Particle size of perlite insulation shall be graded so that a minimum of 20 percent by weight of a sample is retained by a No. 16 (1.18 mm) sieve, and a minimum of 90 percent (cumulative) is retained by a No. 100 (150 μm) sieve. This shall be verified by testing in accordance with the test method described in paragraph (d)(5) of this section.

(6) *Combustibility*. When tested in accordance with paragraph (d)(6) of this section, perlite shall not spark, burn, or smoke.

(d) *Test methods*—(1) *Test method for thermal resistance*. Thermal resistance of perlite shall be determined in accordance with ASTM C 177, C 236 or C 518.

(2) *Test method for water repellency*. See § 456.806(d)(3).

(3) *Test method for density*. Density of perlite shall be determined in accordance with ASTM C 520.

(4) *Test method for solvent solubles*. Place 10 g of perlite in a tared beaker.

Weigh the perlite and beaker to 0.001 g. Add 100 cm³ of trichloroethane (O-T-620). Stir for three minutes, then filter through a Whatman 42 paper filter into a tared beaker. Evaporate the trichloroethane in a steam bath. Heat beaker in an oven for 30 minutes at 105° ± 2°C. Cool in a desiccator. Weigh the beaker and residue to 0.001 g, calculate weight of the residue. Ascertain whether the weight of the residue is greater than 0.1 percent of the weight of the perlite sample.

(5) *Test method for grading*. Particle size grading of perlite insulation shall be determined in accordance with ASTM C 136 with the following modification: if a mechanical sieving device is used, the sieving time shall be five minutes and the test sample shall be 50 g.

(6) *Test method for combustibility*. Hold the perlite specimen in a suitable fixture and position it in direct contact with the flame of a Bunsen burner for 15 seconds. Ascertain whether there is evidence of sparking, burning, or smoke.

§ 456.808 Standards for Polystyrene Thermal Insulation Board.

(a) *Scope*. This section covers cellular polystyrene thermal insulation board used in applications that range up to 74°C (165°F). Polystyrene thermal insulation board is limited to application in enclosed spaces protected by a layer of gypsum board of 12.5 mm (0.5 inch) thickness or greater, or an equivalent fire barrier. Three types of polystyrene insulation board are distinguished by density (see paragraph (c)(3) of this section).

(b) *Definitions* (1) "Cellular Polystyrene Thermal Insulation" is an organic foam composed principally of polymerized styrene resin processed to form a homogeneous rigid mass of closed cells.

(2) "ASTM C 203" means ASTM Standard Test Method for Breaking Load and Calculated Flexural Strength of Preformed Block-Type Thermal Insulation.

(3) "ASTM C 272" means ASTM Standard Test Method for Water Absorption of Core Materials for Structural Sandwich Constructions.

(4) "ASTM C 355" means ASTM Standard Test Method for Water Vapor Transmission of Thick Materials.

(5) "ASTM D 1621" means ASTM Standard Test Method for Compression Strength of Rigid Cellular Plastics.

(6) "ASTM D 1622" means ASTM Standard Test Method for Apparent Density of Rigid Cellular Plastics.

(7) "ASTM D 2126" means ASTM Standard Test Method for Resistance of Rigid Cellular Plastics to Simulated Service Conditions.

(8) "ASTM E 171" means ASTM Standard Test Method for Standard Atmospheres for Conditioning and Testing Materials.

(c) *Physical Requirements.* (1) *Thermal resistance.* Each of the three types of polystyrene thermal insulation board shall have a thermal resistance (R-value) for a mean temperature of 24°C (75°F), as follows:

	Minimum permissible thermal resistance per inch 3.6 ft ² -hr-°F/Btu
Type 1.....	3.7
Type 2.....	3.7
Type 3.....	4.8

This could be verified by testing in accordance with the test method described in paragraph (d)(1) of this section.

(2) *Fire safety—(i) Flame spread.* Polystyrene thermal insulation shall have a flame spread classification of no greater than 75, when tested in accordance with the test method described in paragraph (d)(2) of this section.

(ii) *Smoldering combustion.* Polystyrene thermal insulation shall not flame or show a weight loss greater than 15 percent of the initial weight when tested in accordance with § 456.803(d)(4).

(3) *Density.* The three types of polystyrene thermal insulation board shall have densities within the ranges specified in Table V, when tested in accordance with paragraph (d)(3) of this section.

TABLE V

	Density Kg/m ³ (lb/ft ³)	Minimum	Maximum
Type 1.....	13. (0.8)	24. (1.5)	
Type 2.....	24. (1.5)	48. (3.0)	
Type 3.....	48. (3.0)	80. (5.0)	

(4) *Water absorption.* The water absorbed by Types 1, 2, and 3 polystyrene thermal insulation board shall be no greater than 2.5, 2.5 and 0.1 percent by volume respectively when tested in accordance with paragraph (d)(4) of this section.

(5) *Water vapor permeability.* The three types of polystyrene thermal insulation board shall have a water vapor permeability of not more than 2.0 perm-inch, when tested in accordance with paragraph (d)(5) of this section.

(6) *Strength.* The three types of polystyrene insulation board shall have flexural and compressive strengths no less than the values specified in Table VI, when tested in accordance with paragraph (d)(6) and (d)(7) of this section, respectively.

TABLE VI

	Minimum flexural strength (p.s.i.)	Minimum compressive strength (p.s.i.)
Type 1.....	20	8
Type 2.....	40	18
Type 3.....	85	100

(7) *Dimensional stability.* The three types of polystyrene insulation board shall neither expand nor contract more than 2.0 percent linearly when tested in accordance with paragraph (d)(8) of this section.

(d) *Test Methods.* Test measurements shall be made on polystyrene insulation boards conditioned in accordance with ASTM E 171 unless otherwise specified.

(1) *Test method for thermal resistance.* Determine the thermal conductance of each sample using either ASTM C 177, C 518, or C 236. In case of question, ASTM C 177 shall be used to determine the thermal conductance of the standard reference materials used to calibrate the C 518 or C 236 apparatus. Take the reciprocal of each of these values and ascertain whether it is less than the R-value specified in paragraph (c)(1) of this section.

(2) *Test method for flame spread.* The flame spread classification of polystyrene insulation board shall be determined in accordance with ASTM E 84.

(3) *Test method for smoldering combustion.* See § 456.803(d)(4).

(4) *Test method for density.* The density of the board shall be determined in accordance with ASTM D 1622 except that testing for density shall be performed on the specimen to be tested for flexural strength.

(5) *Test method for water absorption.* Water absorption of polystyrene insulation board shall be tested in accordance with ASTM C 272 after the sample is immersed in water for 24 hours.

(6) *Test method for water vapor permeability.* The vapor permeability of polystyrene insulation board shall be tested in accordance with the desiccant method of ASTM C 355.

(7) *Test method for flexural strength.* The flexural strength of the board shall be determined in accordance with ASTM C 203 with the following exceptions: (i) The width shall be 75 mm (3 inches); (ii) the radii of the bearing supports shall be 9.5 mm (3/8-inch).

(8) *Test method for compressive strength.* The compressive strength of the specimen shall be determined in accordance with procedure A of ASTM D 1621 with the following exception: The compressive strength shall be determined on a 15.2 x 2.5 cm (6-inch by 1-inch) specimen with the 1-inch di-

mension parallel to the thickness of the insulation board and at 10 percent deflection or at the first major load deviation, whichever comes first. A major load deviation shall be construed as that point on the stress-strain curve where the stress load drops significantly below the normal stress fluctuation characteristic of the material under test.

(9) *Test method for dimensional stability.* The board shall be tested for dimensional stability in accordance with procedures B, E, and F of ASTM D 2126 with the following exceptions: (i) The specimen shall be 30.5 cm x 7.6 cm x 2.54 cm (12 inches by 3 inches by 1 inch); (ii) procedure B temperature shall be -53.9° C (minus 65° F); (iii) procedure E temperature shall be 74° C (165° F); and procedure F temperature shall be 60° C (140° F); (iv) samples shall be exposed to these conditions for 7 days.

§ 456.809 Standard for Polyurethane and Polyisocyanurate Thermal Insulation Board.

(a) *Scope.* This section applies to rigid cellular polyurethane and polyisocyanurate insulation board. This material is limited to application in enclosed spaces protected by a layer of gypsum board of 12.5 mm (0.5 in.) thickness or greater, or an equivalent fire barrier.

For the purpose of this section, polyurethane and polyisocyanurate insulation board is classified by type, class, and style. Three types of insulation board are defined as follows:

Type I—density 24 to 37 Kg/m³ (1.5 to 2.3 lb/ft³).

Type II—density 38 to 52 Kg/m³ (2.4 to 3.2 lb/ft³).

Type III—density 53 to 64 Kg/m³ (3.3 to 4.0 lb/ft³).

Two classes of insulation board are defined:

Class 1—unfaced.

Class 2—faced surface.

Five styles for Class 2 insulation boards with facings are defined:

Style A—aluminum facing on one side.

Style B—aluminum facing on both sides.

Style C—asphalt saturated roof felt on one side.

Style D—asphalt saturated roof membrane on both sides.

Style E—faced either on one or both sides with a sheet type, insulation type, or combination of facing materials.

(b) *Definitions.* (1) "Cellular Polyurethane and Polyisocyanurate Insulation" are organic foams composed principally of catalyzed reaction products to form a homogeneous rigid mass of cells.

(2) "Insulation Board" means a rigid thermal insulation material preformed

into rectangular units of uniform thickness and density.

(3) "ASTM C 209" means ASTM Standard Methods of Testing Insulating Board (Cellulosic Fiber), Structural and Decorative.

(4) "ASTM C 355" means ASTM Standard Method of Test for Water Vapor Transmission of Thick Materials.

(5) "ASTM D 1621" means ASTM Standard Method of Test for Compressive Strength of Rigid Cellular Plastics.

(6) "ASTM D 1622" means ASTM Standard Method of Test for apparent Density of Rigid Cellular Plastics.

(c) *Physical Requirements.*—(1) *Thermal resistance.* Polyurethane and polyisocyanurate insulation boards (Class 1 boards and the inner core insulation of Class 2 boards) shall have a thermal resistance (R-value), for a mean temperature of 24°C (75°F), of not less than 7.1 ft²·hr·°F/Btu per inch thickness 30 days from the date of manufacture, and not less than 5.9 ft²·hr·°F/Btu per inch 90 days from the date of manufacture, when tested in accordance with the test method described in paragraph (d)(1) of this section.

(2) *Fire safety.*—(i) *Flame spread.* The flame spread classification of polyurethane and polyisocyanurate insulation board shall be no greater than 75, when tested in accordance with the test method described in paragraph (d)(2) of this section.

(ii) *Smoldering combustion.* Polyurethane and polyisocyanurate insulation board shall not flame or show a weight loss greater than 15 percent of the initial weight when tested in accordance with § 456.803 (d) (4).

(3) *Water absorption.* The water absorbed by polyurethane and polyisocyanurate insulation boards (Class 1 boards, and the inner core material of Class 2 boards) shall be no greater than 4.0 percent by volume, when tested in accordance with paragraph (d) (4) of this section.

(4) *Dimensional stability.* For Class 1 boards, and the inner core material of Class 2 boards, Polyurethane and polyisocyanurate insulations shall show no evidence of cell collapse or visible distortion in any axis, and shall show a linear change of no greater than 2.0 percent and a thickness change no greater than 10 percent, when tested in accordance with paragraph (d)(5) of this section. Insulation boards and core insulation shall show a linear change under humid aging conditions of no greater than 4.0 percent, a thickness change no greater than 5 percent, and no evidence of cell collapse or visible distortion when tested in accordance with paragraph (d)(5) of this section. Class 2 boards

should not exhibit signs of delamination of facings under such conditions.

(5) *Density.* Polyurethane and polyisocyanurate insulation board shall have a density no less than 24 Kg/m³ (1.5 lb/ft³) and not greater than 64 Kg/m³ (4.0 lb/ft³). This shall be verified by testing in accordance with paragraph (d)(6) of this section. The insulation material shall be classified as Type I, II, or III according to its respective density as described in Table VII:

TABLE VII

Type	Density range, Kg/m ³ (lb/ft ³)
I.....	24 to 37 (1.5 to 2.3)
II.....	38 to 52 (2.4 to 3.2)
III.....	53 to 64 (3.3 to 4.0)

(6) *Compressive strength.* Each type of Class 1 boards and the inner core insulation of Class 2 boards of polyurethane or polyisocyanurate insulations shall have a compressive strength no less than the value specified below, when tested in accordance with paragraph (d)(7) of this section.

Type	Compressive strength (psi)
I.....	16
II.....	35
III.....	50

(7) *Flexural strength.* Depending on the style, each type of Class 2 (faced) polyurethane or polyisocyanurate insulation board shall have flexural strength not less than the value specified in Table VIII, when tested in accordance with paragraph (d)(8) of this section.

TABLE VIII.—Flexural Strength Per Inch of Thickness (psi)

Style A	Style B	Style C	Style D
Type I.....	45	60	90
Type II.....	75	110	165
Type III.....	135	180	240

(8) *Dimensional tolerances.* Polyurethane or polyisocyanurate insulation board shall conform to the following tolerances from its specified dimensions:

length: +9mm, -1.6mm (+ $\frac{3}{8}$ inch, - $\frac{1}{16}$ inch)
width: (class 1) ± 1.6 mm ($\pm \frac{1}{16}$ inch), (class 2) ± 3 mm ($\pm \frac{1}{8}$ inch)
thickness: ± 1.6 mm ($\pm \frac{1}{16}$ inch)

(9) *Water vapor permeability.* Class 1 boards and the inner core insulation of Class 2 boards of polyurethane or polyisocyanurate insulation board shall have a water vapor permeability of not more than 3.0 perm-inch for Types I and II, and not more than 2.5 perm-inch for Type III insulation

board, when tested in accordance with paragraph (d)(9) of this section.

(10) *Hole or void.* No single hole or void larger than 6mm $\times$ 6mm $\times$ 3mm ($\frac{1}{4}$ -inch by $\frac{1}{4}$ -inch by $\frac{1}{8}$ -inch) shall be permitted on the surface. No more than 8 holes having dimensions of 3mm $\times$ 3mm ($\frac{1}{8}$ -inch by $\frac{1}{8}$ -inch) or larger shall be permitted per square foot of surface area.

(11) *Crushing or depressions.* Crushings or depressions on both faced and unfaced board shall not exceed 10 percent of the original thickness on more than 20 percent of any individual board surface.

(d) *Test Methods—Conditioning and Specimen Preparation.* Test specimens shall be cut from boards which have aged at least 30 days from the time of manufacture. Unless otherwise specified, specimens shall be conditioned at 23 $\pm$ 2°C (73 $\pm$ 4°F) and 50 $\pm$ 5 percent relative humidity for not less than 48 hr.

(1) *Test method for thermal resistance.* The thermal resistance of insulation board or inner core insulation material shall be calculated using thermal conductance values measured in accordance with either ASTM C 177 or C 518. Sample boards or inner core insulation materials as manufactured shall be separately conditioned for 30 days at 23 $\pm$ 2°C (73.4 $\pm$ 3.6°F) and 50 $\pm$ 5 percent R.H., and for 90 days at 60°C (140°F) dry heat. Tests shall be conducted on a 2.54 cm (1 inch) thick specimen at 23.9°C (75°F).

(2) *Test method for flame spread.* The flame spread classification of polyurethane and polyisocyanurate insulation board shall be determined in accordance with ASTM E 84. Specimens to be tested shall be no less than 51 mm (2 inches) thick.

(3) *Test method for smoldering combustion.* See § 456.803(d)(4).

(4) *Test method for water absorption.* The water absorption of Class 1 and 2 insulation boards and the inner core of Class 2 boards shall be determined in accordance with the water absorption test method in ASTM C 209. When Class 2, faced, insulation board is tested, the facing shall be examined for signs of delamination. Any delamination shall be cause for rejection.

(5) *Test methods for dimensional stability.*—(i) *Specimen preparation.* Cut three specimens, each 30.5 cm $\times$ 30.5 cm (12 in $\times$ 12 in) which have the same thickness as the insulation board. Cut edges shall be smooth and free of cracks and dust.

(ii) *Test procedure for dimensional stability under high temperature.* Measure specimens' length, width and thickness to the nearest 0.025 mm (0.01 inch) after conditioning. Place specimens flat on an expanded metal shelf in an air circulating oven

equipped with a temperature control to maintain a $107^{\circ} \pm 2^{\circ}\text{C}$ ($225^{\circ} \pm 3.6^{\circ}\text{F}$) temperature. After three days, remove the specimens from the oven and condition them for at least 2 hours at temperature and humidity as specified in paragraph (d)(1) of this section. Measure the length, width and thickness to the nearest 0.25 mm (0.01 inch) and ascertain whether the percent change in any dimension is greater than 2.0 percent. Examine specimens for evidence of cell collapse or distortion in any dimension, and for signs of delamination of facings for Class 2 boards.

(iii) *Test procedure for dimensional stability under low temperature.* Follow procedure in the preceding paragraph, except that specimens are to be placed in a low temperature chamber and maintained at $-40^{\circ} \pm 2^{\circ}\text{C}$ ($-40^{\circ} \pm 3.6^{\circ}\text{F}$) for seven days.

(iv) *Test procedure for dimensional stability under humid conditions.* Follow the test procedure for exposing, measuring, and examining specimens except that specimens are to be placed in a suitable chamber equipped with temperature and humidity controls to maintain a temperature of $60^{\circ} \pm 2^{\circ}\text{C}$ ($140^{\circ} \pm 3.6^{\circ}\text{F}$) and relative humidity of 90 to 100 percent during the test. Conduct the test for 28 days. Ascertain the linear change in any dimension is greater than 4.0 percent.

(6) *Test method for density.* The density of insulation board shall be determined in accordance with ASTM D 1622.

(7) *Test method for compressive strength.* The compressive strength of insulation boards and the inner core of Class 2 boards shall be measured in accordance with ASTM D 1621.

(8) *Test method for flexural strength.* The flexural strength of Class 2 (faced) insulation board shall be determined in accordance with ASTM C 203 using a moving head speed of 12.7 mm (0.5 inch) per minute.

(9) *Test method for water vapor permeability.* The water vapor permeability shall be measured in accordance with the desiccant method of ASTM C 355.

§ 456.810 Interim Standards for Urea-Formaldehyde Based Foam Insulation.

(a) *Scope.* This section applies to urea-formaldehyde based foam thermal insulation for sidewall application only.

(b) *Definitions.* (1) "ASTM D257" means ASTM Standard Method of Test for DC Resistance or Conductance of Insulating Materials.

(c) *Physical Requirements.*—(1) *Thermal resistance.* Urea-formaldehyde (UF) foam insulation shall have an effective thermal resistance of not less than $2.2 \text{ m}^2\text{C/W}$ for a 75 mm thick sample ($4.16 \text{ ft}^2\text{hr}^{\circ}\text{F/Btu}$ per

in.), when tested in accordance with the test method described in paragraph (d)(2) of this section.

(2) *Surface burning characteristics.* The flame spread classification of UF foam insulation shall not exceed 25, when tested in accordance with the test method described in paragraph (d)(3) of this section.

(3) *Corrosiveness.* Under conditions specified in paragraph (d)(4) of this section, UF foam insulation shall cause no perforations in the aluminum, copper, or steel samples, and no pitting of the galvanized steel sample. When tested in accordance with paragraph (d)(4) of this section, UF foam insulation shall not cause a weight loss greater than 0.20 gm in the galvanized steel sample.

(4) *Density.* UF foam insulation shall have a density of no less than 10.4 kg/m^3 ($.645 \text{ lb/ft}^3$), when tested in accordance with the test method specified in paragraph (d)(5) of this section.

(5) *Water absorption.* Under conditions specified in paragraph (d)(6) of this section, the water absorption of UF foam insulation shall not exceed 15 percent by volume. When tested in accordance with paragraph (d)(6) of this section, UF foam shall not absorb the droplets of methyl violet solution in less than one hour.

(6) *Free formaldehyde content.* The free formaldehyde content of the resin used in UF foam insulation shall not exceed 1.0 percent when tested in accordance with paragraph (d)(7) of this section.

(7) *Setting time.* UF foam insulation shall set in not less than 20 seconds and not more than 90 seconds when tested in accordance with paragraph (d)(8) of this section.

(8) *Volume resistivity.* The volume resistivity of fresh UF foam insulation shall be not less than $5 \text{ K} \div \text{cm}$, when tested in accordance with paragraph (d)(9) of this section.

(9) *Water drainage.* UF foam insulation shall manifest no water leakage from a plywood cavity when tested in accordance with paragraph (d)(10) of this section.

(10) *Shrinkage during curing.* UF foam insulation shall not shrink more than 4.0 percent in any direction when subjected to the conditions specified in paragraph (d)(11) of this section.

(11) *Fungi resistance.* UF foam shall display no fungal growth and the area of fungal growth on the specimen test frame shall not exceed 10 percent of the fungal growth area on the control when subjected to the conditions specified in paragraph (d)(12) of this section.

(12) *Warning label.* The following label shall be printed on all UF resin containers:

Caution: Urea Formaldehyde Foam Insulation may release a small quanti-

ty of formaldehyde vapor. This occurrence may present a health hazard to anyone who previously has been sensitized to formaldehyde or who has a history of respiratory problems.

(13) *Additional requirements.* Manufacturers of UF foam thermal insulation shall provide training and certification of applicators of this product and shall provide installation instructions.

(d) *Test Methods.*—(1) *Preparation of specimens.* Unless otherwise specified in the test procedure, the foam shall be prepared and applied in accordance with the manufacturer's instructions. The temperature of the unreacted materials prior to foaming shall be between 15° and 32°C . Unless otherwise specified in the test procedure, specimens shall be foamed in closed cavities at ambient conditions of $23 \pm 2^{\circ}\text{C}$ and 50 ± 5 percent R.H.

(2) *Test method for thermal resistance.*—(i) *Conditioning.* Maintain test specimens in the closed cavities in vertical position at $23 \pm 2^{\circ}\text{C}$ and 50 ± 5 percent relative humidity for 28 days prior to testing.

(ii) *Testing.* The laboratory value of thermal resistance shall be determined as specified in ASTM C 177, ASTM C 518 or ASTM C 236, using a specimen $75 \pm 0, -1 \text{ mm}$ thick, a mean temperature of 24°C and a mean temperature differential across the specimen of $22 \pm 3^{\circ}\text{C}$. In cases of dispute ASTM C 177 or ASTM C 236 shall be used. Specimen surfaces may be those obtained during foaming or they may be obtained by slicing the material to remove not more than 5 mm from each side.

(iii) The effective thermal resistance shall be computed as 60 percent of the laboratory thermal resistance value determined by the preceding paragraph.

(3) *Test method for surface burning characteristics.* The flame spread classification of UF foam shall be determined in accordance with ASTM E 84.

(4) *Test method for corrosiveness.* (i) Condition the UF foam thermal insulation specimens as indicated in paragraph (d)(2) of this section.

(ii) *Apparatus and Materials.* (A) Oven capable of maintaining $50 \pm 2^{\circ}\text{C}$ and another oven capable of maintaining $70 \pm 2^{\circ}\text{C}$.

(B) Small container, approximately $90 \times 50 \text{ mm}$, made of inert material such as polypropylene and equipped with a lid so designed that water condensing on it will not drip, but will run to the walls of the container.

(C) Large container, capable of housing the small container, but that will fit inside the oven.

(D) Test specimens, approximately $50 \times 50 \text{ mm}$ by 0.0762 mm thick metal, free of tears, punctures or crimps as follows:

- 3003 Bare Aluminum, soft temper;
- ASTM B152, type ETP, Cabra No. 110, soft copper;
- Low carbon, commercial quality, cold rolled shim steel.

(E) Test specimens, section of truss plates approximately 50 × 50 mm by 1.0 mm made from hot dipped galvanized sheet steel conforming to Grade A or B, ASTM B 446 with a total zinc coating of 275–0, +31 g/m². At least 40 percent of the zinc shall be on any one side of the test specimens. Test specimens shall have at least six perforations.

(F) Trichloroethylene, analytical reagent grade.

(G) Balance, capable of determining the mass of the galvanized specimen to an accuracy of 1 mg.

(H) 40 W appliance light bulb.

(I) Distilled water, nitric acid 1.002 kg/L, ammonium hydroxide (relative density 0.90), chromium trioxide, silver nitrate, hydriodic acid, reagent grade chemicals.

(J) Several noncorrosive plastic supports and a 150 g mass.

(iii) *Procedure.* Make two duplicate tests for each determination. Wash the metal specimens with trichloroethylene to remove any oil or grease. Dry at room temperature. Cut a specimen 60×60 mm square and 15 mm thick from the UF foam block such that the 60×60 mm surface is that obtained from foaming and not slicing the foam. All other surfaces of the specimen shall be obtained by slicing the foam. Compress the specimen between flat, parallel, noncorrosive plastic surfaces for 2 min at 700±7 kPa. Prepare 16 such wafers, noting which surface had been obtained from foaming. These surfaces shall be placed adjacent to the metal specimens in the tests. Weigh the galvanized specimens and record its mass. Place a noncorrosive plastic screen support in the small container. Place a foam wafer on the support at least 5 mm above the bottom of the container. Place the metal specimen on the wafer; put another wafer on the metal specimen and then place on top of the sandwich a noncorrosive plastic screen and a 150 g mass. The 150 g mass shall not block air flow to the top wafer. Cover the lid of the small container is closed but not sealed. Place the small container in the large container, add sufficient distilled water to the large container, and close the large container but do not seal it. Place the assembly in an oven at 70±2°C for 24 h. Remove the assembly from the 70°C oven, seal the large container and transfer the assembly to an oven maintained at 50±2°C. Maintain the assembly at this temperature for 27 days. Upon completion of the test remove the assembly from the oven and dismantle. The large container shall still have some water in it; if

there is no water present at the end of the test, the results for those materials passing the test are suspect and the test should be repeated. Thoroughly wash the metal specimens under running water and lightly brush them to remove loose corrosive products. Remove the remaining corrosive products from the aluminum, copper and steel specimens by immersing them in a solution of 10 parts distilled water to 1 part 1.002 Kg/l nitric acid. Remove the remaining corrosion products from the galvanized specimen by the procedure recommended in ASTM G 1 in the method for the chemical cleaning of zinc after testing. Rinse all metal specimens in distilled water and dry. Examine the aluminum, copper and steel specimens for perforations by holding them over a chrome rejected 40 W appliance light bulb. Examine the galvanized specimen for pitting and weigh the specimen and its control. The control shall be a specimen having the same number of perforations, be of the same geometric form and be from the same batch of truss plates as the specimen. The control shall not be exposed in the oven but shall be cleaned identically to the specimen. Subtract the loss in mass of the control from the loss in mass of the specimen.

(5) *Test method for density.* The density of UF foam insulation shall be determined in accordance with ASTM D 1622.

(6) *Test methods for water absorption.*—(i) *Floating test.* Cut three cubes, each 180 × 180 × 90 mm from a block of foam. Accurately weigh each cube and place them singly on a distilled water surface. The surface in contact with the water shall be that obtained from foaming. After 7 days at 23 ± 2°C and 50 ± 5 percent R.H., remove the cubes and accurately weigh them. Calculate the percentage of water absorption on a volume basis.

(ii) *Droplet test.* Prepare a 0.3 percent solution of methyl violet in distilled water. Apply 5 drops, each 0.03 ml, of the solution by means of a syringe to a freshly cut horizontal surface of the foam and to a surface obtained from foaming. Measure the time required by the drops to be completely absorbed through the surface of the foam. This point in time may be ascertained under direct lighting as the moment when the areas to which the drop has been applied become dull. Perform the test at 23 ± 2°C and 50 percent R.H.

(7) *Test method for free formaldehyde content of resin.* Prepare a standard sulfite solution as follows: Dissolve, without heating, approximately 250 g Na₂SO₃·7H₂O in about 200 ml distilled water. Dilute to one litre. Adjust the pH of the sulfite solution to 8.9 with H₂SO₄ and NaOH solutions. The

solution is stable only for a short period of time and it should be used immediately after adjustment of the pH. Place 20 ml distilled water in an Erlenmeyer flask. Accurately weigh approximately 2 g resin solution (ready for foaming) and add it to the flask. Stir the mixture well, add approximately 10 g crushed ice and mix thoroughly.

Add 50.0 ml of the standard sulfite solution and titrate immediately with 0.49 g/l H₂SO₄ to pH 8.9. Perform the procedure in duplicate and run a blank.

Calculate the percentage formaldehyde content of the resin as follows:

$$\text{percent formaldehyde} = 3(A - B)D/C$$

Where:

A = ml of 0.49 g/l H₂SO₄ for the specimen

B = ml of 0.49 g/l H₂SO₄ for the blank

C = mass of resin solution

D = normality of the H₂SO₄ solution.

(8) *Test method for setting time.* A conical specimen with a bottom diameter of approximately 30 cm and a height of approximately 30 cm shall be made by foaming from a hose. Start a stopwatch immediately after the cone has been formed and immediately commence slicing the cone with a spatula. Record the time when the foam no longer slices as if it were whipped cream but shears off leaving a smooth surface. This time is the setting time.

(9) *Test method for volume resistivity.* Determine the volume resistivity of the foam as specified in ASTM D 257. Test a 90 mm cube 15 min after foaming between 90 mm square metal plate electrodes using a voltage of 110 V.

(10) *Test method for water drainage.* Prepare a cavity approximately 2440 mm high, 400 mm wide and 90 mm deep from wood and plywood. Fill the cavity by foaming in place or troweling. Leave the cavity in a vertical position for 24 hours, during which time the bottom and underside of the structure should be examined for water. The cavity shall be built so that any free water from the foam can run out easily at the bottom.

(11) *Test method for shrinkage.* Fill three boxes, each measuring 480 × 480 × 90 mm made from unwaxed corrugated cardboard and conforming to CGSB 43-GP-21, type 1, class 1, grade C4. The boxes shall be held in a snug fitting enclosure during foaming to prevent distortion of the box. Maintain the cavities in a vertical position for 28 days at 23±2°C and 50±5 percent R.H. Then open the cavities and measure the linear shrinkage in the two principal directions. Report the average of all six determinations as the linear shrinkage. If fractures in the specimens occur, the data should be discounted and the test repeated.

(12) *Test method for fungi resistance.* Prepare two test frames, measuring 480 × 480 × 90 mm from Douglas fir plywood and white spruce. Submerge the test frames in tap water for 48 h. Remove the test frames and dry the surface with paper towels. Drill a hole in one test frame and foam in the material under test. Maintain the two test frames in a vertical position for 28 days at 23±2° C and 50±5 percent R.H. Then open up the both test frames, remove and examine the cured foam. Determine the area of fungi growth in the control and in the specimen test frame.

§ 456.811 Standards for aluminum foil reflective thermal insulation.

(a) *Scope.* This section applies to aluminum reflective thermal insulation. Four classes of aluminum foil reflective thermal insulation are defined. They are:

- (1) Class 1—One reflective air space.
- (2) Class 2—Two reflective air spaces.
- (3) Class 3—Three reflective air spaces.
- (4) Class 4—Four reflective air spaces.

(b) *Definitions.* (1) "ASTM C 445" means ASTM Standard Test Method for Normal Total Emittance of Surface of Materials .01 Inch or Less in Thickness at Approximately Room Temperature.

(2) "ASTM D585" means ASTM Standard Method of Sampling and Accepting a Single Lot of Paper, Paperboard, Fiberboard or Related Product.

(3) "Emittance" means the ability of an opaque material to emit radiant energy.

(c) *Physical requirements.*—(1) *Thermal resistance.* Depending on the direction of heat flow the four classes of aluminum foil reflective thermal insulation shall have values of thermal resistance (R-values) measured in ft²·hr·°F/Btu not less than the values specified in Table IX when tested in accordance with paragraph (d)(1) of this section.

TABLE IX.—Minimum R-Values

Class	Up	Direction of heat flow	
		Horizontal	Down
1.....	1.7	2.8	3.0
2.....	3.0	4.7	5.5
3.....	5.7	6.5	8.0
4.....	7.0	7.8	11.0

(2) *Foil.* The foil used in insulation shall contain not less than 99 percent aluminum by weight.

(3) *Kraft paper.* Kraft paper used in aluminum foil insulation shall meet the requirements of ASTM D 858.

(4) *Adhesive.* Adhesive used in bonding aluminum foil insulation shall be waterproof material and shall show no sign of bleeding or delamination when tested in accordance with the test method described in paragraph (d)(2) of this section.

(5) *Thickness.* Layers of insulation composed of unsupported foil that is exposed shall have a minimum thickness of 0.010 mm (0.0004 inch). Unsupported foil that is sandwiched in a multilayer sheet shall have a minimum thickness of 0.009 mm (0.00035 inch). Foil bonded to Kraft paper shall have a minimum thickness of 0.00025 inch.

(6) *Emittance.* The foil shall be an emittance of not more than 0.05 when tested in accordance with the test method described in paragraph (d)(3) of this section.

(7) *Water vapor permeance.* All classes of the aluminum foil insulation shall have a water vapor permeance not greater than 1.0 perm for a vapor pressure differential of 25 mm (1 in.) of mercury when tested in accordance with the test method described in paragraph (d)(4) of this section.

(8) *Pliability.* Aluminum foil insulation shall not crack when folded to 180° bend at a temperature of 21±1.1° C (70±2° F) and a relative humidity of 50±5 percent.

(9) *Finished insulation.* Layers shall be securely bonded together along edges, forming an attachment flap suitable for nailing or stapling.

(i) *Class 1.* Insulation shall be designed to be installed so that the reflective surface is parallel to, and a minimum of 19 mm (¾ inch) from the opposite face of the air space.

(ii) *Class 2.* Insulation shall be designed to be installed so that the reflective surfaces are parallel to, and a minimum of 19 mm (¾ inch) from the opposite faces of the two air spaces.

(iii) *Class 3.* Insulation shall be designed to be installed so that full separation of layers occur and the reflective surfaces are parallel to, and a minimum of 19 mm (¾ inch) from the opposite faces of the three air spaces.

(iv) *Class 4.* Insulation shall be designed to be installed so that full separation of layers occur and the reflective surfaces are parallel to, and a minimum of 19 mm (¾ inch) from the opposite faces of the four air spaces.

(d) *Test methods.*—(1) *Test method for thermal resistance.* Thermal resistance of aluminum foil thermal insulation shall be calculated by measuring thermal conductance in accordance with ASTM C 236.

(2) *Test method for adhesive.* Specimens for tests shall consist of pieces of aluminum foil insulation cut to approximately 76 by 152 mm (3 by 6 inches) in size. Suspend specimens in vertical position and heat to a tem-

perature of 82° C±2.8° C (18° F±5° F) for at least five hours. At the end of heating period, examine the reflective surfaces to determine whether the adhesive had bled or exuded through the surface, or if delamination has occurred.

(3) *Test method for emittance.* Emittance of aluminum foil insulation shall be measured in accordance with ASTM C 445.

(4) *Test method for water vapor permeance.* Water vapor permeance of aluminum foil insulation shall be measured in accordance with ASTM E 96, procedure A.

§ 456.812 Standards for storm windows, storm and thermal doors, caulks and sealants, clock thermostats, water heater and heating/air conditioning duct insulation.

(a) *Scope.* This section applies to the following materials or components thereof:

(1) Storm windows (aluminum combination, aluminum, wood, or rigid vinyl frame).

(2) Storm and thermal doors (aluminum, frame, wood, thermal or rigid vinyl frame).

(3) Caulks and sealants.

(4) Clock thermostats.

(5) Water heater and heating/air conditioning duct insulation.

(b) *Definitions.* (1) "ANSI" means American National Standards Institute.

(2) "AAMA" means Architectural Aluminum Manufacturers Association.

(3) "NWMA" means National Woodwork Manufacturers Association.

(4) "NBS/PS" means National Bureau of Standards Voluntary Product Standard.

(5) "F.S." means Federal Specification.

(6) "F.H.D.A." means Fir and Hemlock Door Association.

(7) "NEMA" means National Electrical Manufacturers Association.

(8) "SDI" means Steel Door Institute.

(9) "SWI" means Steel Window Institute.

(10) "CPSC" means Consumer Product Safety Commission.

(c) *Material and product standards.*—

(1) *Storm windows.* (i) Aluminum combination storm windows shall conform to ANSI/AAMA 1002.9-1977, "Voluntary Specification for aluminum Combination Storm Windows for External Applications." Aluminum frame storm windows shall conform to Sections C1.2, C1.3, C1.4 and C1.6 of ANSI/AAMA 1002.9-1977.

(ii) Wood frame storm windows shall conform to Section 3 of ANSI/NWMA I.S. 2-73, "Industry Standard for Wood Storm Windows."

(iii) Rigid vinyl frame storm and thermal windows shall be constructed

with vinyl profile extrusions which conform to NBS/PS26-70, "Rigid Polyvinyl-Chloride Profile Extrusions."

(2) *Storm and thermal doors.* (i) Aluminum frame storm doors shall conform to ANSI/AAMA 1102.7-1977, "Voluntary Specifications for Aluminum Storm Doors."

(ii) Pine storm and thermal doors shall conform to the requirements for exterior doors listed in Section 3 of ANSI/NWMA I.S. 5-73, entitled "Ponderosa Pine Doors."

(iii) Fir, hemlock, and spruce storm and thermal doors shall conform to the requirements for exterior doors listed in Section 3 of FHDA 6-77, "Industry Standard for Douglas Fir, Western Hemlock, and Sitka Spruce Doors and Blinds."

(iv) Rigid vinyl frame storm and thermal doors shall be constructed with vinyl profile extrusions which conform to NBS/PS 26-70.

(v) If storm or thermal doors contain glazing, safety glazing shall conform to CPSC safety standard Part 1201—"Safety Standard for Architectural Glazing Materials."

(3) *Caulks and sealants.* Caulks and sealants shall conform to the applicable Federal Specifications and ASTM standards indicated in table X:

TABLE X

Type of caulk or sealant	Applicable specification
Putty.....	F.S. TT-P-00791B—modified to allow natural calcium carbonate.
Oil and Resin Base.....	F.S. TT-C-00598C and ASTM C-570-72.
Acrylic (Solvent type).....	F.S. TT-S-00230C.
Butyl Rubber.....	F.S. TT-S-001657.
Chlorosulphonated Polyethylene.....	F.S. TT-S-00230C.
Latex Sealing Compound.....	ASTM C 834-76.
Polysulfide—single component.....	F.S. TT-S-00230C.
Polysulfide—multicomponent.....	F.S. TT-S-00227E.
Polyurethane—single component.....	F.S. TT-S-00230C.
Polyurethane—multicomponent.....	F.S. TT-S-00227E.
Silicone.....	F.S. TT-S-001543A.

(4) *Clock thermostats.* The thermostat portion of clock thermostats shall conform to NEMA DC 3-1978 "Low-voltage Room Thermostats," and NEMA DC 15-1972 "Residential controls: Line-voltage Room Thermostats," and shall meet the following requirements:

(i) The operating differential shall not exceed 1.11° C (2° F).

(ii) The cycling rate at 50 percent maximum load shall not exceed six cycles per hour, and

(iii) The effective operating droop shall not exceed 2.2° C (4° F).

(5) Water heater and heating/air conditioning duct insulation shall conform to F.S. HH-I-558, "Federal Specifi-

cation of Mineral Fiber Batts and Blankets—Industrial Type."

§ 456.813 Standards for aspects of multiglazed insulating glass units for windows and doors.

(a) *Scope.* This section applies to sealed multiglazed insulating glass units for use in windows and doors. Two types of multiglazed insulating glass units are (1) glass edge type, and (2) organically sealed type.

(b) *Definition.* (1) "Sealed insulating glass unit" means a preassembled unit, comprising sealed panes of glass separated by dehydrated space(s), intended for windows and doors.

(2) "Frost point" means the temperature at which visible frost begins to deposit on the interior air space glass surface of a sealed insulating glass unit in contact with the measuring surface of the frost point apparatus.

(3) "ASTM E576-76" means American Society for Testing and Materials Standard Test Method for Dew/Frost Point of Sealed Insulating Glass Units in Vertical Position.

(c) *Physical properties.* (1) The organic seal for multiglazed insulating glass units must pass the following tests:

(i) The frost point of each test specimen shall be no higher than -28.9° C (-20° F) when tested in accordance with the method described in paragraph (d)(2) of this section.

(ii) No fog shall be visible on either of two test specimens after testing in accordance with the method described in paragraph (d)(3) of this section.

(2) Sealed multiglazed insulating glass units when used in doors shall conform to CPSC safety standard Part 1201—"Safety Standard for Architectural Glazing Materials."

(d) *Test methods.*—(1) *Specimen preparation.* (i) Each test specimen shall measure 356 ± 6 mm by 508 ± 6 mm (14 ± ¼ in. by 20 ± ¼ in.) and shall be composed of two panes of transparent glass each having a thickness of 4.8 mm (¾ in.). The nominal air space thickness shall be 6.4 mm (¼ in.).

(ii) The test specimens shall be preassembled and sealed with organic sealant.

(2) The frost point of sealed insulating glass units shall be measured in accordance with ASTM E 576-76. Six specimens shall be tested.

(3) *Test method for fogging.*—(i) *Apparatus:* (A) A copper tubing cooling plate approximately 127 mm (5 in.) square. The temperature of the cooling plate shall be 21 ± 3° C (70 ± 5° F).

(B) Ultraviolet light source, 275 W, type RS sunlamp or equivalent, having an output of not less than 2 mw/cm² when tested at the distance needed to maintain the specimen glass surface temperature at 66 ± 3° C (150 ± 5° F).

(ii) *Preparation of test specimens.* (A) Mount two specimens in a frame that is positioned vertically.

(B) Remove from a corner of the specimen on one side of the glass the metal edging, banding tape or other covering so as to expose 76 mm (3 in.) of glass periphery on two adjacent edges. The corner so exposed shall be on the side of the specimen exposed to ultraviolet light source.

(C) Place the ultraviolet light perpendicular to the glass surface with the lamp aligned to the corner so as to maintain a temperature of 66 ± 3° C (150 ± 5° F) as measured by a thermocouple which is taped to the glass surface.

(iii) *Test procedure.* (A) Place the copper tubing cooling plate on the center of the back side of the specimen.

(B) Turn on the ultraviolet light source and maintain the glass surface temperature at 66 ± 3° C (150 ± 5° F) by adjusting the distance of the light.

(C) Expose each specimen continuously for one week.

(D) Remove the specimen from the test and examine after 24 hours at room temperature. Ascertain whether either specimen shows fogging.

§ 456.814 Standards for furnace efficiency modifications.

(a) *Scope.* This section applies to the following furnace efficiency modifications:

(1) Replacement gas-fired central furnaces.

(2) Replacement oil-fired central furnaces.

(3) Heat Pumps.

(4) Replacement oil burners.

(5) Electrically operated vent dampers for gas furnaces.

(6) Mechanically actuated vent dampers for gas furnaces.

(7) Thermally actuated vent dampers for gas furnaces.

(8) Electrically operated vent or chimney connector dampers for oil-fired furnaces.

(9) Automatic gas ignition systems.

(b) *Product standards.*—(1) *Standard for replacement gas-fired central furnaces.* Gas-fired central furnaces shall conform to ANSI Z21.47-1978, entitled "American National Standard for Gas-fired Central Furnaces," ANSI Z21.15-1977, entitled "Gas-Fired, Low Pressure Steam and Hot Water Heating Boilers," or ANSI Z21.59-1974, "Gas-Fired High Pressure Steam and Hot Water Heating Boilers."

(2) *Standard for replacement oil burners.* Oil burners shall conform to ANSI Z96.2-1974/UL-296, entitled "Oil Burners" and ANSI Z91.2-1976, entitled "Performance Requirements for Automatic Pressure Atomizing Oil Burners of the Mechanical—Draft Type".

(3) *Heat pumps.* Heat pumps shall conform to UL 559 "Standard for Heat Pumps."

(4) *Standard for electrically operated vent dampers on gas furnaces.** Electrically operated vent dampers on gas furnaces shall conform to ANSI Z21.66-1977, entitled "American National Standard for Electrically Operated Automatic Vent Damper Devices for Use with Gas-Fired Appliances".

(5) *Standards for mechanically actuated vent dampers on gas furnaces.** Mechanically actuated vent dampers on gas furnaces shall conform to ANSI Z21.67-1979, entitled "American National Standard for Mechanically Actuated Automatic Vent Damper Devices for Use with Gas-Fired Appliances".

(6) *Standard for thermally actuated dampers on gas furnaces.** Thermally actuated vent dampers on gas furnaces shall conform to ANSI Z21.68-1979, entitled "American National Standard for Thermally Actuated Automatic Vent Damper Devices for Use with Gas-Fired Appliances".

(7) *Standard for vent dampers on oil-fired furnaces.** Vent dampers on oil-fired furnaces shall conform to UL17, entitled "The Proposed First Edition of the Standard for Vent or Chimney Connector Dampers for Oil-Fired Appliances".

(8) *Standard for automatic gas ignition system.** Automatic gas ignition systems shall conform to ANSI Z21.20-1975, entitled "American National Standard for Automatic Gas Ignition Systems and Components".

§ 456.815 Load management devices.

(a) *Scope.* This section applies to devices associated with load management techniques. Application of load management technology in the United States is expected to expand rapidly. Consensus specifications for load management devices are likely to become available in the future as their use becomes more common.

(i) *General.* (i) It shall be suitable for its intended purpose.

(ii) Claims of its performance shall be substantiated by certified test data on production models.

(iii) It shall have UL approval.

(iv) It shall not be incompatible with the utility's control equipment, where relevant.

(v) It shall be constructed of substantial and compatible materials.

(vi) Where required for safety, warning decals, safety locking, and automatic shut-off devices shall be used.

(vii) It shall not cause improper functioning of other household appliances.

* NOTE.—All vent dampers and automatic gas ignition devices (paragraphs (4)-(8) above) shall contain a label stating: "This device should be installed by an approved contractor."

(2) The manufacturers shall maintain a suitable quality control program to ensure that all component parts, as well as the finished product, will conform to all of the manufacturer's efficiency, performance, and safety claims.

(3) The manufacturer shall provide detailed installation and general maintenance instructions with each unit.

(4) The manufacturer shall provide a warranty for the device which covers a period of at least 3 years.

Subpart I—Energy Conservation Installation Standards

§ 456.901 Scope.

This subpart contains the installation standards, referred to herein as standards practices, for the safe and effective installation of energy conservation measures.

The standard practices of this Subpart contain references to existing ASTM (American Society for Testing and Materials) and ANSI (American National Standards Institute) standards. These references are listed in Appendix A of this subpart.

§ 456.902 Definitions.

(a) Certain technical terms relating to insulation not defined below are used in this subpart in accordance with the definitions given in ASTM Designation C-168-67, "Standard Definitions of Terms Relating to Thermal Insulating Materials."

(b) As used in this subpart—

(1) "Approved" means acceptable to whatever authority regulates the installation procedures discussed in this practice. Such authority is usually a municipal, state, or federal agency or an underwriters' inspection or rating bureau.

(2) "Circuit" means the complete path about which an electric current travels.

(3) "Class 2 Thermostat Circuit" means the circuit by which a thermostat controls a heating and/or cooling unit which is characterized by limits involving current and/or voltage. Transformers supplying Class 2 thermostat circuits are marked as such (see Article 725 of the National Electric Code, 1978 Edition, Pages 546 to 554).

(4) "Conditioned Space" means any space in a residential building which is served by a heating or cooling system.

(5) "Draft Hood" means a component of gas-fired water heaters which mixes secondary air with the combustion gases leaving the unit thus enabling a smooth, continuous relief of gases up the flue pipe.

(6) "Draft Regulator" means a component of oil-fired water heaters which mixes secondary air with the combustion gases leaving the unit thus

enabling a smooth, continuous relief of gases up the flue pipe.

(7) "Flue Damper" means a device which automatically closes flues on oil and gas-fired water heaters to prevent the escape of heat through the flue pipe when the water heater's main burner is not being fired. This device also may be called a vent damper.

(8) "Flue Pipe" means an exhaust pipe carrying products of combustion from oil-fired and gas-fired water heaters to the outside environment.

(9) "Galvanic Corrosion" means a form of deterioration resulting from the electrochemical reaction that occurs when certain dissimilar metals are in contact.

(10) "Hi-Limit Switch" means a temperature control that senses temperature changes in electric, gas, and oil-fired water heaters and cuts off the energy supply or fuel flow to the unit when the internal water temperature rises above a certain point.

(11) "Mastic" means a pasty material used as an adhesive for installing insulation board.

(12) "Mineral Cellular Loose-fill Thermal Insulating Materials" means mineral particulate material in granular, modular, powdery, or similar form designed to be installed dry by pouring, blowing, or hand placement between retaining surfaces or as a covering layer.

(13) "Mineral Fiber Batt and Blanket Thermal Insulating Materials" means a flexible thermal insulation that can readily be conformed to curved or irregular surfaces, suitably bound together to provide units of substantial area for handling and application, which may be faced or reinforced with confining media.

(14) "Mineral fiber Loose-fill Thermal Insulating Material" means particulate material in fibrous form designed to be installed dry by pouring, blowing, or hand placement between retaining surfaces or as a covering layer.

(15) "Multi-glazing" means an arrangement of two or more separated layers of glazing (providing one or more insulating air spaces). Multi-glazing can be achieved by installing a preassembled, sealed insulating glass unit or by affixing one or more additional sheets of glazing onto an existing window, sash or glass.

(16) "Oil Burner" means a device which, for oil-fired heating equipment in a residential building, atomizes, vaporizes, or otherwise disperses the fuel oil, mixes it with air and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler, including the combustion chamber.

(17) "Organic Cellular Rigid Board Thermal Insulation" means rigid or semirigid thermal insulation preformed into rectangular units.

(18) "Organic (Cellulosic or wood fiber) Loose-fill Thermal Insulating Materials" means organic particulate material in granular, modular, powdery, or similar form designed to be installed dry by pouring, blowing, or hand placement between retaining surfaces or as a covering layer.

(19) "Pressure Relief Valve" means a safety valve which opens to vent pressure when the pressure in the water tank exceeds a pre-set level due to excessive water temperature.

(20) "Prime Window (door)" means the original window (door) to which a storm window (door) or multi-glazing is added to provide greater thermal resistance.

(21) "Reflective Thermal Insulation" means thermal insulation depending for its efficiency in large part on reduction of radiant heat transfer across spaces by use of one or more surfaces of high reflectance and low emittance.

(22) "Replacement Oil Burner" means an oil burner that conforms to the requirements of the most recent revisions of American National Standard Safety Standard for Oil Burners, Z96.2-1974 (UL 296-September 1974) and American National Standard Performance Requirements for Automatic Pressure Atomizing Oil Burners of the Mechanical Draft Type, Z91.2-1976 and approved by a nationally recognized testing agency.

(23) "Storm Door" means a door installed outside or inside a prime door, creating an insulating air space to provide greater resistance to heat flow than the prime door alone.

(24) "Storm Window" means a unit consisting of glazing installed in a window opening either outside or inside a prime window, creating an insulating air space to provide greater resistance to heat flow than the prime window alone. The storm window may be removable or permanently attached.

(25) "Thermal Door" means a unit installed in a door opening which has an R-value of at least two and is weatherstripped to provide greater resistance to heat flow.

(26) "Thermal Window" means a window system with improved thermal performance through the use of multiple glazing and more airtight construction. Some thermal windows also provide an insulating frame and sash to provide greater thermal efficiency.

(27) "Unconditioned Space" means any space, out-of-doors or in a residential building, which is not served by a heating or cooling system.

(28) "Unit" means a storm window, thermal window, multi-glazing or storm door as defined herein. It is a manufactured item assembled in a factory or a knock down unit assembled at the site prior to installation.

(29) "Vapor Barrier" means any material (as defined in ASTM Designation C-755-73) that has a water vapor permeance (perm) rating of one (1) or less.

NOTE 1. The following materials, upon proper application, constitute vapor barriers: Asphalt impregnated kraft paper, aluminum foil, plastic film, and paint and wall-coverings which are labeled by the manufacturer as having a perm rating of one (1) or less when applied in accordance with the manufacturer's instructions.

(30) "Water Heater Thermal Insulating Materials" means mineral fiber jacket with a non-combustible facing material to insulate hot water heaters.

§ 456.903 Coverage and additional requirements.

(a) *Coverage.* This Subpart shall apply to all installation contractors who appear on the list of contractors prepared by the State pursuant to § 456.312 under the circumstances described in the State Plan pursuant to § 456.305.

(b) *Additional requirements.* (1) The installation practices in this Subpart contain certain "recommendations" regarding the application of vapor barriers in some condensation zones. The term "recommend" is used to signify that the procedures identified are not required to provide a safe and effective installation of insulation in every instance but may prevent the occurrence of moisture problems under certain conditions. The eligible customer ultimately needs to accept or reject the "recommended" practices contained herein. Therefore, whenever a "recommendation" is contained in these practices, the person responsible for the installation shall present to the eligible customer the "recommendation" and any additional information which he can provide to assist the eligible customer in making a decision.

(2) At the completion of each installation of thermal insulation materials covered under §§ 456.904-456.908, the person responsible for such installation shall comply with the requirements of § 456.909, "Certification Procedures for the Installation of Thermal Insulation Materials."

§ 456.904 Standard Practice for the Installation of Organic and Mineral Fiber Loose-Fill Thermal Insulation.

(a) *Scope.* (1) This practice covers the installation of organic (cellulosic or wood) and mineral (rock, slag, or glass) fiber loose-fill thermal insulation on ceilings, attics, floors and in frame wall cavities.

(2) This practice applies only to the installation of dry loose-fill thermal insulation consisting of organic or mineral fiber materials by pneumatic or manual means. It does not apply to material installed in a wet condition or

where liquid is added at any stage of the installation process.

(3) This practice covers the installation process from pre-installation inspection through post-installation inspection. It does not cover the production of the insulation materials, whether such production takes place in a factory or at the installation site.

(4) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(5) This practice is not intended to supersede the authority of state and local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(6) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of thermal insulation materials or, in the alternative, that the person supervising the installer have such knowledge. It also requires an understanding of the fundamentals of residential construction that affect the installation of insulation.

(7) This practice covers aspects of installation relating to the effectiveness, durability, and safety of insulation in service.

(8) This practice provides minimum requirements that will help to ensure the installation of insulation in a safe and effective manner. Actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of insulation depend not only on the quality of the insulating materials, but also on their proper and workmanlike installation.

(2) Improper installation of insulation may reduce its thermal effectiveness, cause fire hazards and other unsafe conditions, and promote the deterioration of the structure in which it is installed.

NOTE 1.—Specific hazards that can result from improper installation include:

a. deterioration or failure of electrical wiring components and heat buildup caused by overfused electrical circuits or by exposed metal wire conductors, when wiring is encapsulated in thermal insulation;

b. fire caused by heat buildup from recessed lighting fixtures covered by insulation;

c. flame spread on exposed flammable vapor barriers; and

d. deterioration of wood structures, paint failures, and corrosion of metal fasteners and electrical components caused by prolonged moisture accumulation within building components.

PROPOSED RULES

(c) *Safety Precautions.* During installation, do not smoke or carry any open flame in the attic or any truck or van used for installation.

(d) *Pre-installation Inspection and Preparation*—(1) *General.* (i) Identify all recessed lighting fixtures (including wiring compartments and ballasts), motors, fans, blowers, heaters, furnaces, flues, chimneys, and other heat-producing devices in all areas where insulation is to be installed.

(11) Install blocking, such as wood, metal, unfaced mineral wool batts, or non-flammable rigid cardboard around items identified in paragraph (d)(1)(i) of this section to permanently maintain a 3-inch minimum airspace all around them. Install blocking at least as high as the height of the finished insulation. Do not cover recessed lighting fixture enclosures, or their wiring compartments and ballasts, so as to entrap heat and prevent the free circulation of air unless the fixture(s) are otherwise approved for the purpose. If mineral fiber is installed, the blocking and airspace specified in this section need not be provided around flues and chimneys.

(iii) Install necessary blocking so that all devices which may require maintenance or servicing remain accessible after the insulation is installed.

(iv) Inspect the siding, roof, walls, ceilings, and attic floors to identify areas where a previous moisture problem has caused paint peeling, warpage, stain, fungus growth, rotting, or other structural damage. Do not install insulation in such areas unless these conditions and their source(s) have been corrected.

(v) Block all openings in ceilings, floors, and sidewalls through which the insulating material may escape. Seal all wall cavities which open into a basement or crawl space before wall insulation is installed.

(vi) Determine the structural soundness and strength of walls or ceilings. Do not install insulation in areas too weak to withstand the pressures or loads created by the filling process unless such condition has been corrected.

(2) *Walls.* (i) Inspect walls to determine whether insulation was installed previously. Do not install additional insulation where there is existing insulation in wall cavities.

(ii) For buildings located in Zone I of Figure 1, provide a vapor barrier on the interior surface of all bathrooms and unvented kitchens and laundry areas. Caulk or seal all major cracks in the exterior walls of these rooms including joints between the floor and wall (except where impractical because of carpeting), between wall and ceiling, at joints around window frames, and around wall penetrations

for electrical services (outlets and switches), plumbing stacks, and heating and air conditioning ducts.

NOTE 2.—It is recommended that a vapor barrier and caulking, such as described in this section, also be provided in the buildings in Zone II of Figure 1.



Figure 1. Condensation Zones in the United States

1977 ASHRAE HANDBOOK OF FUNDAMENTALS, Page 20.9

NOTE 3.—The above requirements for moisture control are minimum requirements needed to prevent long-term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above and/or additional venting of the wall cavity from the exterior or by additional ventilation of the occupied space.

a. Homes with an area of less than 800 square feet.

b. Homes with less than 250 square feet per occupant.

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors.

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(3) *Attics and Ceilings.* (i) Identify and measure ventilation area in attics. Do not install insulation in attics unless ventilation openings in attic areas conform to one of the following requirements or arrangements have

been made to conform to these requirements within six months from the date of installation:

(A) 1 ft² minimum of free ventilation area per 150 ft² of attic floor area, if no vapor barrier exists in the attic;

(B) 1 ft² minimum of free ventilation area per 300 ft² of attic floor area if a vapor barrier does exist;

(C) 1 ft² minimum of free ventilation area per 300 ft² of attic floor space if at least 50 percent of the required ventilating area is provided with fixed ventilation located in the upper portion of the space to be ventilated (at least three feet above eave or soffit vents) with the remainder of the required ventilation provided by eave or soffit vents.

NOTE 4.—Screen or louvers which cover ventilation openings reduce the free ventilation area. Most metal louvers have the free ventilation area stamped on their frame. If the free ventilation area of louvers is not known, assume that it is half of the area of the ventilation opening and increase the opening accordingly.

(ii) Ensure that all ventilation openings have suitable louvers or screens to prevent rain or snow from entering the attic.

(iii) For buildings located in Zones I and II of figure 1, if there is no existing insulation or if existing insulation is to be removed, provide a vapor barrier membrane on the upper surface of the ceiling material. Never install a vapor barrier on top of existing insulation.

NOTE 5.—For buildings in Zones I and II of Figure 1, where there is existing ceiling insulation and no vapor barrier, it is recommended that a vapor barrier such as paints and wall coverings which are labeled by the manufacturer as having a perm rating of one (1) or less and are applied in strict accordance to the manufacturer's instructions be installed in the interior surface of bathrooms and unvented kitchens and laundry areas. It is also recommended that all cracks and penetrations on the interior ceiling surface of these rooms (such as around lighting fixtures and at wall and ceiling joints) be caulked.

NOTE 6.—The above requirements for moisture control are minimum requirements needed to prevent long term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above on the ceilings of all rooms or by additional ventilation of the occupied space.

a. Homes with an area of less than 800 square feet.

b. Homes with less than 250 square feet per occupant.

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors.

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(iv) If a vapor barrier membrane is installed tape all tears, penetrations, and all joints which are not overlapped by at least three (3) inches.

(v) Install blocking around attic doors and bathroom, kitchen or similar vents which open into the attic, if the level to which the insulation will be installed exceeds their height.

NOTE 7.—Ensure that blocking is installed around vent openings in a manner that enables the free movement of air through the vent into the attic.

(vi) Install blocking to restrain loose-fill insulation from clogging soffit vents at the eaves restricting attic ventilation. Install blocking to ensure free movement of air through soffit vents into the attic.

(vii) Cover all bathroom and kitchen vents which open into the attic with temporary blockings prior to the installation of insulation to assure that no insulation material falls into the vents.

(e) *Installation Procedures.* (1) Do not install insulation unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(2) Handle all insulation material in accordance with manufacturer's instructions and keep it dry and free of extraneous materials.

(3) Install insulation so that it will not be in contact with the ground or other sources of water.

(4) Install insulation only between conditioned and unconditioned spaces.

(5) Install insulation in ceilings or floors in such a manner that the electrical wires' temperature under prolonged normal rated loading conditions does not exceed the values specified in the National Electrical Code (Table 310-16 through 19, latest edition) for that particular type of wiring

(See Appendix B): *Provided*, the circuit has proper overcurrent protection.

(6) The requirement of paragraph (e)(5) of this section is deemed to be met if exposed wiring in attics is treated as indicated in subparagraphs (6)(i), (ii), or (iii) of this paragraph.

(i) Place insulation in attics up to the underside of electrical wiring. Do not cover electrical wiring; or,

(ii) Place permanent barriers which exceed the height of the insulation around the sides of wires and below such wires. The barrier should form a three inch wide air space which will permanently restrain the thermal insulation from covering the electrical conductor(s). The barrier material must be consistent with local code requirements for durability, safety, fire, moisture resistance, and rodent and fungus protection. See Figure 2.

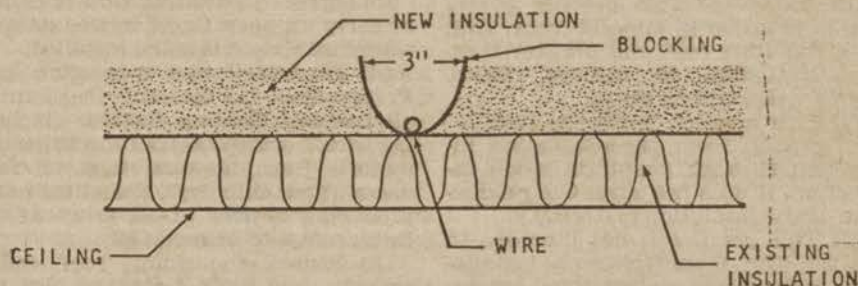


Figure 2. Installing Insulation Around Wires

NOTE 8.—Do not handle electrical wiring with exposed metal conductors or brittle electrical insulation.

(iii) The requirements of paragraphs (6)(i) and (6)(ii) do not apply to single wires which are attached parallel along the joist, provided that the circuit has properly rated overcurrent protection.

(7) Do not fill wall cavities that act as air ducts.

(8) Fill all other wall cavities completely in accordance with the manufacturer's recommendations.

(9) Locate entry holes for pneumatic equipment to permit the complete filling of wall cavities. Open entry holes with a technique that permits refinishing with little or no change in the appearance or structural integrity of the wall.

NOTE 9.—A complete fill generally requires a minimum of two openings per floor per stud space (refer to the manufacturer's instructions). Some construction types may not require the drilling of entry holes to gain access to every cavity. It may be possible to gain access through eave or overhang panels. In addition, in balloon construction access may be gained from the attic.

(10) After the entry holes have been opened, use them to check the wall cavity for fire stops and other obstructions

which require additional entry holes to assure complete filling of the cavity.

(11) For pneumatic installation in ceiling areas, use the least air pressure meeting the equipment manufacturer's instructions.

(12) Do not blow insulation into electrical devices or vents which open into the attic.

(13) Fit the attic side of access doors or panels with insulation batt (or equivalent material) except where prevented by a retractable ladder.

(14) Close all entry holes in a workmanlike manner using materials compatible with the original materials. Do not close entry holes in sheathing which is covered by an exterior brick veneer or siding.

(f) *Post-installation Inspection and Procedures.* (1) Inspect the coverage and depth of the insulation. Fill all "pockets" and voids in the insulation. Level insulation in a manner which will not damage wiring or any other items.

(2) Ensure that insulation does not restrict the soffit vents affecting the minimum attic ventilation requirements specified in paragraph (d)(3)(i) of this section.

(3) Ensure that insulation material is not in the air spaces specified in paragraph (d)(1)(ii) of this section.

(4) Clear all electric wall outlets and switches of any insulation material. Turn off electric power while performing these tasks.

(5) Ensure that all cavities that act as air ducts for heating, cooling, or ventilation requirements are not restricted by insulation materials or temporary blocking.

(6) Remove all temporary blockings which were installed under paragraph (d)(3)(vii) of this section.

(7) Ensure that the requirements of paragraphs (e)(5) and (e)(6) of this section have been met.

§ 456.905 Standard Practice for the Installation of Mineral Fiber Batts and Blankets Thermal Insulation.

(a) *Scope.* (1) This practice covers the installation of mineral (rock, slag, or glass) fiber batt and blanket thermal insulation in ceilings, attics, floors, walls, and on ducts.

(2) This practice covers the installation process from pre-installation inspection through post-installation inspection. It does not cover the production of the insulation materials.

(3) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(4) This practice is not intended to supersede the authority of state and local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(5) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of thermal insulation materials or, in the alternative, that the person supervising the installer have such knowledge. It also requires an understanding of the fundamentals of residential construction that affect the installation of insulation.

(6) This practice covers aspects of installation relating to the effectiveness, durability, and safety of insulation in service.

(7) This practice provides minimum requirements that will help to ensure the installation of insulation in a safe and effective manner. Actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of insulation depend not only on the quality of the insulating materials, but also on their proper and workmanlike installation.

(2) Improper installation of insulation may reduce its thermal effectiveness, cause fire hazards and other unsafe conditions, and promote the deterioration of the structure in which it is installed.

NOTE. 1.—Specific hazards that can result from improper installation include:

a. deterioration or failure of electrical wiring components and heat buildup caused by overfused electrical circuits or by exposed metal wire conductors when wiring is encapsulated in thermal insulation;

b. fire caused by heat buildup from recessed lighting fixtures covered by insulation;

c. flame spread on exposed flammable vapor barriers; and

d. deterioration of wood structures, paint failures, and corrosion of metal fasteners and electrical components caused by prolonged moisture accumulation within building components.

(c) *Safety Precautions.* Do not smoke or carry an open flame in the attic or where insulation is being installed.

(d) *Pre-Installation Inspection and Preparation.—(1) General.* (i) Identify all recessed lighting fixtures (including wiring compartments and ballasts), motors, fans, blowers, heaters, furnaces, flues, chimneys, and other heat-producing devices in all areas where insulation is to be installed.

(ii) Inspect the siding, roof, walls, ceilings, and attic floors to identify areas where a previous moisture problem has caused paint peeling, warpage, stain, fungus growth, rotting, or other structural damage. Do not install insulation in such areas unless these conditions and their source(s) have been corrected.

(2) *Attics and Ceilings.* (ii) Identify and measure ventilation area in attics.

Do not install insulation in attics unless ventilation openings in attic areas conform to one of the following requirements or arrangements have been made to conform to these requirements within six months from the date of installation:

(A) 1 ft² minimum of free ventilation area per 150 ft² of attic floor area, if no vapor barrier exists in the attic;

(B) 1 ft² minimum of free ventilation area per 300 ft² of attic floor area if a vapor barrier does exist;

(C) 1 ft² minimum of free ventilation area per 300 ft² of attic floor space if at least 50 percent of the required ventilating area is provided with fixed ventilation located in the upper portion of the space to be ventilated (at least three feet above eave or soffit vents) with the remainder of the required ventilation provided by eave or soffit vents.

NOTE 2.—Screens or louvers which cover ventilation openings reduce the free ventilation area. Most metal louvers have the free ventilation area stamped on their frame. If the free ventilation area of louvers is not known, assume that it is half of the area of the ventilation opening and increase the opening accordingly.

(ii) Ensure that all ventilation openings have suitable louvers or screens to prevent rain or snow from entering the attic.

(iii) For buildings located in Zones I and II of Figure 1, if there is no existing insulation or if existing insulation is to be removed, provide a vapor barrier membrane on the upper surface of the ceiling material. Never install a vapor barrier on top of existing insulation.



Figure 1. Condensation Zones in the United States

1977 ASHRAE HANDBOOK OF FUNDAMENTALS, Page 20.9

NOTE 3. For buildings in Zones I and II of Figure 1, where there is existing ceiling insulation and no vapor barrier, it is recommended that a vapor barrier such as paints and wall coverings which are labeled by the manufacturer as having a perm rating of one (1) or less and are applied in strict accordance to the manufacturer's instructions be installed in the interior surface of bathrooms and unvented kitchens and laundry areas. It is also recommended that all cracks and penetrations on the interior ceiling surface of these rooms (such as around lighting fixtures and at wall and ceiling joints) be caulked.

NOTE 4. The above requirements for moisture control are minimum requirements needed to prevent long term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above on the ceilings of all rooms or by additional ventilation of the occupied space.

- a. Homes with an area of less than 800 square feet,
- b. Homes with less than 250 square feet per occupant,
- c. Homes with tight wall and ceiling construction and weatherstripped windows and doors,
- d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(iv) If a separate vapor barrier membrane is installed, tape all tears, penetrations, and all joints which are not overlapped by at least three (3) inches.

(3) Floors.

NOTE 5. Insulation of floors over unheated spaces will cause these spaces to be colder. Accordingly, appropriate measures may need to be taken to keep water pipes from freezing during colder weather.

(i) Where insulation is to be installed beneath floors over crawl spaces, cover the ground surface with a ground cover which acts as a vapor barrier (such as 6-mil polyethylene sheeting lapped at the joints and securely taped with duct tape to the interior surface of crawl space foundation walls).

(ii) Where practical in crawl spaces provide a free ventilation area of one square foot for every 1500 square feet of the ground area of the crawl space. Provide cross ventilation where possible. See Note 2 for guidance on estimating free ventilation area.

(iii) Provide a vapor barrier on the winter warm side of floors to be insulated in buildings located in Zones I and II of Figure 1.

(4) Ducts. Inspect duct to assure that it is dry and clean and that all joints are tightly sealed. Seal all joints that do not appear tight with tape or other materials.

(e) Installation procedures.—(1) General. (i) Do not install insulation unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(ii) Handle all insulation material in accordance with manufacturer's instructions and keep it dry and free of extraneous materials.

(iii) Install insulation so that it will not be in contact with the ground or other sources of water.

(iv) Install insulation only between conditioned and unconditioned spaces.

(v) Install insulation so that it fits tightly between framing members on all sides. Cut insulation that is too long for a space to the correct size. If insulation is too short for a space, cut a piece to fill the void. Do not double over or unnecessarily compress insulation.

(vi) Maintain a three inch minimum airspace around motors, fans, blowers, heaters, furnaces and other heat producing devices. If kraft face insulation is used also maintain a three inch minimum airspace between the facing and flues and chimneys. Maintain a three inch minimum airspace around recessed lighting fixtures (including wiring compartments and ballasts). Do not install insulation over recessed lighting fixture enclosures, or their wiring compartments and ballasts, so as to entrap heat and prevent the free circulation of air unless the fixtures are otherwise approved for the purpose.

(vii) Assure that all devices which may require periodic servicing remain accessible after the insulation is installed.

(2) Walls. (i) Size insulation correctly to fit tightly at the sides and both ends of the stud space. Tightly butt-joint batts which are shorter than the stud space length.

(ii) Install a vapor barrier on the winter warm side of exterior walls to be insulated in Zones I and II of Figure 1. Secure the vapor barrier to

the studs to avoid gaps and fish-mouths.

(iii) If the insulation does not have a vapor barrier attached to it, provide a separate vapor barrier on the winter warm side over the installed insulation.

(iv) Tape all tears and penetrations in the vapor barrier and all joints which are not overlapped by at least three inches with duct tape (or equivalent).

(v) If the insulation material is provided with a flammable vapor barrier, or if a separate vapor barrier which is flammable is installed as required under Subdivision (iii) of this paragraph, cover the insulation with a finish material having a finish rating or not less than 15 minutes when tested according to ASTM Designation E119-76.

(3) Attics, Ceilings, and Floors. (i) Place vapor barriers as required in paragraphs (d)(2)(iii) and (d)(3)(iii) of this Section on the winter warm side.

(ii) When installing insulation around bridging or cross bracing of ceiling or floor joists, fit the insulation material tightly around these obstructions and assure that there are no gaps in the insulation.

(iii) When recessing insulation batts in floor joist cavities, turn insulation up at the header or cut and attach pieces of insulation to the header to avoid heat loss through the header.

(iv) Fit insulation tightly in floor joist areas and secure in place with either wire fasteners, galvanized wire, or nylon mesh or galvanized screen held in place by stapling or nailing, or galvanized wire lacing held in place by stapling or nailing.

(v) Install insulation in ceilings or floors in such a manner that the electrical wires' temperature under prolonged normal rated loading conditions does not exceed the values specified in the national electrical Code (Table 310-16 through 19, latest edition) for that particular type of wiring (See Appendix B): *Provided*, The circuit has proper overcurrent protection.

(vi) the requirement of Subdivision (v) of this subparagraph is deemed to be met if exposed wiring in attics is treated as indicated below.

(A) Place insulation in attics to the underside of electrical wiring. Do not cover electrical wiring; or

(B) If insulation is installed above the level of the wire maintain a minimum air space of three (3) inches around the sides of wires. Do not cover electrical wiring. See Figure 2.

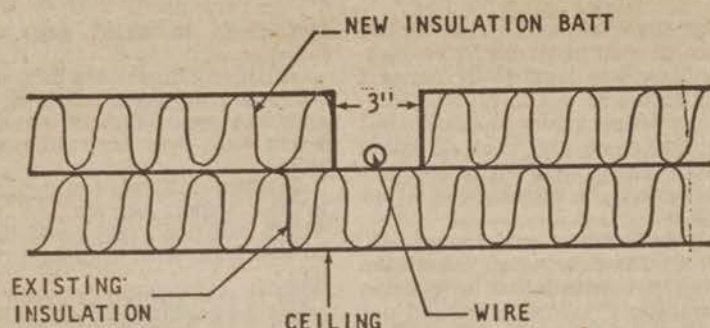


Figure 2. Installing Insulation

Around Wires

NOTE 6: Do not handle electrical wiring with exposed metal conductors or brittle electrical insulation.

(c) The requirements of (A) and (B) do not apply to single wires which are attached parallel along the joist provided that the circuit has properly rated overcurrent protection.

(vii) Do not cover soffit vents with insulation nor in any other way restrict attic ventilation.

(viii) Install insulation around vents which open into the attic in a manner that will ensure free movement of air through the vent into the attic.

(ix) Fit the attic side of access doors or panels with insulation batt except where prevented by a retractable ladder.

(4) **Ducts.** (i) Install insulation batt or blanket to the exterior of the duct, with a vapor barrier on the outside.

(ii) Butt joint of batt tightly and in such a way that a vapor barrier tab overlaps the joints by at least two inches. Mechanically fasten the tab to the underlying vapor barrier and seal the joint with a duct tape.

(iii) On rectangular ducts install insulation so that it is not compressed to more than 50 percent of its nominal thickness at corners.

(iv) On horizontal ducts over 24 inches wide, secure the bottom of the insulation with mechanical fasteners as required by the manufacturer. Seal fastener penetrations to provide airtight system.

(v) Where ducts are subject to mechanical abuse, such as in all habitable spaces or spaces used for storage, except on ceilings, install a protective cover, if required by local codes and regulations, to provide impact resistance.

Post-Installation Inspection and Preparation. (1) Ensure that there are no gaps or areas where insulation is unnecessarily compressed.

(2) Ensure that insulation does not restrict the soffit vents affecting the minimum ventilation requirements specified in paragraph (d)(2)(i) of this section.

(3) Ensure that there is no insulation material in the air spaces specified in paragraph (e)(1)(vi) of this section.

(4) Ensure that all insulation is covered with a suitable covering material in accordance with paragraph (e)(2)(vi) and (e)(4)(vi) of this section.

(5) Ensure that the requirements of paragraphs (e)(3)(v) and (e)(3)(vi) of this section have been met.

§ 456.906 Standard Practice For the Installation of Organic Cellular Rigid Board Thermal Insulation.

(a) **Scope.** (1) This practice covers the installation of organic cellular rigid board thermal insulation for concrete floors, foundation perimeter, interior of masonry walls, interior of frame walls, ceilings, and as exterior sheathing on walls and roofs.

(2) This practice covers the installation process from pre-installation inspection through post installation inspection. It does not cover the production of the insulation material.

(3) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(4) This practice is not intended to supersede the authority of state and local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(5) This practice requires a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of thermal insulation materials. It also requires an understanding of the fundamentals of residential construction that affect the installation of insulation.

(6) This practice provides minimum requirements that will help to ensure the installation of insulation in a safe and effective manner. Actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to ensure effective and safe installation.

(7) This practice covers the installation of the rigid board but does not include in detail the installation of exterior siding and roofing required to protect rigid board insulation from the effects of weather or the installation of interior fire protective coverings.

(8) This practice covers aspects of installation relating to the effectiveness, durability, and safety of insulation in service.

(b) **Significance.** (1) This practice recognizes that effectiveness, safety, and durability of insulation depend not only on the quality of the insulation materials, but also on their proper and workmanlike installation.

(2) Improper installation of rigid board insulation may reduce its thermal effectiveness, cause fire hazards and other unsafe conditions, and promote the deterioration of the structure in which it is installed.

(c) **Safety Precautions.** (1) Do not smoke or carry an open flame in any area in which insulation is being installed or cut.

(2) The vapors of many solvents used as mastic and adhesives in the installation of organic cellular rigid board thermal insulation are flammable. Keep solvents in approved containers and carefully follow the specific instructions on the labels.

(d) **General Requirements.** (1) For all rigid board applications, carry out the pre-installation and preparation, installation, and post-installation inspection in the order prescribed in paragraphs (e) through (n) of this section.

(2) For interior applications of rigid board insulation on walls and ceilings, this practice requires, on all exposed faces and edges of the insulation material, a cover having a finish rating of not less than 15 minutes, when tested according to ASTM Designation E 119-76.

NOTE 1.— $\frac{1}{2}$ -inch gypsum plaster and some $\frac{1}{2}$ -inch gypsum board (dry wall) applied in accordance with the manufacturers' instructions provide the required finish rating.

(3) Install insulation only between conditioned and unconditioned spaces except as provided in paragraphs (e) and (h) of this section.

(4) The following provisions apply to the control of moisture in buildings to be insulated:

(i) These provisions apply to all installations of organic cellular rigid insulating boards which do not have an integral vapor barrier on the winter-warm side or do not have a material

structure (such as closed-cell foam) which makes the board, in the thickness commonly used, into a vapor barrier.

(ii) These provisions also apply to installations of all organic cellular rigid board insulation (including those specifically excluded in Subparagraph (i)) where the board is installed on the exterior of a wall which has insulation in a wall cavity on the winter-warm side of the board insulation.

(iii) In all installations to which this section applies and in which insulation is installed on the interior (winter-

warm side) of the wall or ceiling in Zones I and II of Figure 1, install a vapor barrier on the winter-warm side, consisting of a continuous sheet meeting the requirements of § 456.902(b)(29), covering the entire solid wall area and placed over the insulation board prior to installing the protective cover required under paragraph (g)(3)(V) of this section. Overlap all joints in vapor barrier membranes by at least three inches or tape the joints. Seal all penetrations of the vapor barrier at electrical outlets, plumbing penetrations, and other obstructions.



Figure 1. Condensation Zones in the United States

1977 ASHRAE HANDBOOK OF FUNDAMENTALS, Page 20.9

(iv) In installations to which this section applies, but insulation board is installed on the exterior (winter cold side) of the wall or roof in Zones I and II of Figure 1, provide a vapor barrier in the form of a paint or wall covering meeting the requirements of § 456.902(b)(29) in bathrooms and other areas which generate excessive water vapor, such as unvented kitchens and laundry rooms. Seal major cracks on the interior of all insulated areas, including cracks at the floor to wall joints (unless impractical because of carpeting), at joints around window frames, and around wall penetrations for electrical services (outlets, switch-

es, ceiling fixtures), plumbing stacks, and heating and air-conditioning ducts.

NOTE 2.—The above requirements for moisture control are minimum requirements needed to prevent long term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above and/or additional venting of the wall cavity from the exterior as additional ventilation of the occupied space.

a. Homes with an area of less than 800 square feet,

b. Homes with less than 250 square feet per occupant,

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors,

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(5) Ensure that only mastics and solvents compatible with the board insulation material are used.

(e) *Foundation Perimeter*—(1) *Applicability*. This section applies to the installation of organic cellular rigid board thermal insulation to the exterior of foundation walls and around the perimeter of concrete slab floors on grade. Only rigid board material that, in the thickness used, constitutes a vapor barrier (as defined in § 456.902(b)(29)) by virtue of its structure shall be used in this application.

(2) *Pre-Installation Inspection and Preparation*. (i) Identify any termite shields that would be covered by the insulation. Do not install board insulation unless the termite shield is effectively extended beyond the insulation and cover to be installed.

(ii) Prepare a trench of not less than 12 inches in depth on the exterior of the foundation.

Note 3. The depth below grade to which the insulation is effective depends on local climate conditions. It is recommended that the insulation be installed to the depth of the frost line or to the bottom of the foundation wall, whichever is less.

(iii) Clean the area to which the insulation is to be applied from all grease, loose paint or material. Ensure that all surfaces are dry.

(iv) Install any anchoring devices required for the application of the covering material.

(v) Identify conditions needing special attention, such as electrical outlets, utility meters, piping, and faucets.

(3) *Installation Procedure*. (i) Do not install insulation board out of doors when the wall surface is wet or the temperature is below freezing.

(ii) Cut board insulation to fit around any surface projections, around windows, and at corners so as to fit tightly against each other and against the anchoring devices.

(iii) Adhere the insulation board against the wall or slab edge assuring an intimate and continuous bond.

(iv) Install a protective cover over the insulation board to provide impact resistance. Fit the cover tightly so as to prevent water and insect penetration.

Note 4. Various protective covers include, but are not limited to, wire and other reinforced cement plaster and heavy-bodied latex coatings. Consult the insulation board manufacturer for compatible coatings.

(v) Back-fill and tamp ground around foundation or slab edge to slope away from the building.

(4) *Post-Installation Inspection.* (i) If termite shields were identified in subparagraph (2)(i) of this paragraph ensure that the shields are extended effectively beyond the covers. Give specific attention to corners and door sills to assure that no paths for insect passage exist.

(ii) Ensure that all joints in the cover are tight and that no cracks exist in cement plaster covers.

(iii) Ensure that all special conditions identified in subparagraph (2)(v) of this paragraph are properly treated and that the installation does not interfere with the proper operation of the devices.

(iv) Ensure that all trenches that were dug are backfilled and tamped, and that they slope away from the wall or slab edge.

(f) *Concrete Floors—(1) Applicability.* This section applies to the installation of organic cellular rigid board thermal insulation on concrete floors over unheated basements and crawl spaces or on concrete slabs on grade.

(2) *Pre-Installation Inspection and Preparation.* (i) Ensure that the concrete floor surface is clean, dry, and free of oil and loose paint.

(ii) Fill any cracks in concrete floor with patching cement several days prior to installation.

(iii) Seal joint between floor and walls to reduce air infiltration.

(iv) Identify all floor drains. Do not cover such drains unless permitted by local codes.

(v) When installing insulation on a slab on grade, provide a waterproof barrier such as two separate brushed-on coatings of asphalt emulsion prior to the installation of the rigid board. Consult the board manufacturer for recommendations on coverage.

(3) *Installation Procedure.* (i) Cut the insulation board to appropriate size to provide tight but not forcefit joints.

(ii) Adhere the board thermal insulation to the concrete, assuring an intimate and continuous bond.

(iii) Mechanically fasten the underfloor, either directly or indirectly, to the concrete floor slab.

NOTE 5. Rigid board insulation may be attached to 1 inch by 2 inch or 1 inch by 3 inch (nominal dimensions) furring strips 16 inch on centers. Lay wood furring strips at right angle over the long dimension of the insulation board and fasten with concrete nails to the concrete floor or slab. Furring strips should be placed so that the joints of the underfloor (1/2 inch exterior grade plywood) fall on the centers of the furring strips. The underfloor should be adhered to the furring strips, nailed at 4 inches on centers, and sanded smooth.

NOTE 6. The installation of the board insulation on top of concrete floors raises the

finish floor 2 inches or more. This may require the adjustment of doors.

(iv) Under any permanently installed heat producing appliance, such as a stove, gas or oil fired water heater, furnace, or boiler, install a non-combustible cover over the underflooring.

(4) *Post-Installation Inspection.* (i) Ensure that the overlayment subfloor is flat, all subfloor butt or tongue and groove joints are tight, and that the subfloor is securely fastened.

(ii) Ensure that a non-combustible cover has been installed as required in subparagraph (3)(iv) of this paragraph.

(g) *Masonry Wall Interior—(1) Applicability.* This section applies to the installation of organic cellular rigid board insulation to the interior of masonry walls, particularly basement walls, which separate conditioned and unconditioned spaces.

(2) *Pre-Installation Inspection and Preparation.* (i) Inspect the walls to assure that they are structurally sound, that they are dry and do not show signs of recent dampness such as mold, and that they are clean and free of grease, loose paint, and loose material.

(ii) Remove baseboards or moldings on walls to be insulated.

(iii) Install anchoring devices required for the application of the covering material.

(iv) Determine edge treatment to be provided at windows and doors after installation of insulation and covering.

(v) Identify all electrical outlets and switches or have them extended to the level of the new surface by an approved electrician.

(vi) Identify and seal cracks such as at ceilings, floors, windows, and door frames to reduce air infiltration.

(3) *Installation Procedures.* (i) Do not install insulation board within three inches of open flame heaters, flues, or recessed lighting fixtures.

(ii) Cut the board insulation to fit around any surface projections such as windows, electrical outlets, conduits, and surface mounted water and drain pipes.

(iii) Adhere the insulation board to the wall, assuring an intimate and continuous bond.

(iv) Do not cover water or drain pipes with insulation board (during cold weather, heat from the house may be necessary to prevent the pipes from freezing). If possible, wedge some insulating board pieces between the pipes and the wall.

(v) After all insulation board is applied, install a cover having a finish rating of not less than 15 minutes when tested according to ASTM Designation E 119-76, except as noted in paragraph (d)(2) of this section. Water

and drain pipes may be covered with approved covering material.

(vi) Cover the edges of the insulation around electrical outlets and switches, leaving sufficient space to permit their convenient use.

(vii) Replace moldings at floors where necessary, close any gaps and joints at ceilings and corners (tape and spackle for gypsum drywall), and install trim as needed around doors and windows.

(4) *Post-Installation Inspection.* (i) Ensure that all surfaces of insulation are covered in accordance with the requirements of paragraph (d)(2) of this section.

(ii) Ensure that electrical outlets and switches operate freely.

(iii) Ensure that the requirements of subparagraph (3)(i) of this paragraph regarding the installation of insulation board within three inches of heat producing equipment have been met.

(h) *Masonry Crawl Space Walls—(1) Applicability.* As an alternate to insulating the floor over a crawl space, the walls of the crawl space may be insulated even though this is not a conditioned space.

(2) *Pre-Installation Inspection, Preparation, Installation, and Post-Installation Inspection.* (A) All applicable provisions of paragraph (g) of this section shall apply.

(B) Do not cover ventilation openings, but provide a means for closing the openings during the winter.

(C) Install a ground cover which meets the vapor barrier criteria as defined in § 456.902(b)(29).

(i) *Frame Wall Interior—(1) Applicability.* This section applies to the installation of organic cellular rigid board insulation to the interior of finished framed wall constructions which separate conditioned from unconditioned spaces.

(2) *Pre-Installation Inspection and Preparation.* (i) Apply all provisions of paragraph (g)(2) of this section.

(ii) Secure the anchoring devices specified in paragraph (g)(2)(iii) of this section to the wall framing studs.

(iii) Identify water and drain pipes both on the surface of the wall and in the wall cavities. Provide nailers as needed for attaching the covers required in paragraph (d)(2) of this section.

(3) *Installation Procedures.* (i) Install insulation board according to the procedures given in paragraph (g)(3) of this section.

(ii) Do not install insulation over stud spaces that contain water supply or waste pipes (during cold weather, heat from the house may be necessary to prevent the pipes from freezing). The covering material may be placed over stud spaces containing pipes.

(4) *Post-Installation Inspection.* Conduct post-installation inspection as

required in paragraph (g)(4) of this section.

(j) *Ceilings*—(1) *Applicability*. This section applies to the installation of organic cellular rigid board insulation to the underside (winter warm side) of existing plaster or gypsum board ceilings. See paragraph (k) of this section for requirements for the interior installation of insulation board to wood roof decks.

(2) *Pre-Installation Inspection and Preparation*. (i) Inspect the ceilings to assure that they are structurally sound, that they are dry and do not show signs of recent dampness such as mold, are clean, free of grease, loose paint, and loose material.

(ii) Remove any existing moldings at the wall to ceiling joint or on the ceiling itself.

(iii) Identify electrical outlets and recessed lighting fixtures or have an approved electrician lower these to the level of the new finished ceiling surface.

(iv) Identify the location of ceiling joists.

(v) Seal all cracks at wall to ceiling joints, and any other cracks such as at electrical outlets.

(3) *Installation Procedure*. (i) Maintain a three inch airspace around recessed lighting fixtures, flues, and other heat producing devices.

(ii) Cut insulation board to appropriate size.

(iii) Adhere the board to the ceiling assuring an intimate and continuous bond.

(iv) Install a cover having a finish rating of not less than 15 minutes when tested according to ASTM Designation E 119-76, except as noted in paragraph (k)(2) of this section.

(v) If the cover consists of gypsum or similar board material, install the board so that the joints fall on the center line of the ceiling joists and nail the board to the joists with nails of sufficient length to penetrate the cover material, the insulation board, the existing ceiling, and into the ceiling joist.

(vi) Finish the ceiling with tape and spackle as required.

(4) *Post-Installation Inspection*. (i) Ensure that all surfaces and edges of insulation board are covered with a material having a finish rating of at least 15 minutes when tested according to ASTM Designation E 119-76, except as noted in paragraph (d)(2) of this section.

(B) Ensure that the requirements of subparagraph (3)(i) of this paragraph have been met.

(k) *Exposed Wood Deck Ceilings*—(1) *Applicability*. This section applies to the installation of organic cellular rigid board insulation to the underside (winter warm side) of exposed wood roof decks.

(2) *Pre-Installation Inspection and Preparation*. Apply all applicable provisions of paragraph (j)(2) of this section.

(3) *Installation Procedure*. (i) Cut the insulation board to fit snugly between any exposed joists or rafters.

(ii) Maintain a three inch airspace around lighting fixtures, flues, and other heat producing devices.

(iii) Install the insulation board with mechanical fasteners to the wood deck insuring firm attachment but not puncturing the roofing.

(iv) Install a cover having a finish rating of not less than 15 minutes when tested in accordance with ASTM Designation E 119-76, except as noted in paragraph (d)(2) of this section.

(v) Secure the cover through the insulation board into the wood deck. Insure that the nails do not puncture the roofing.

(vi) Finish the ceiling with tape and spackle as required and install edge trim as needed.

(4) *Post-Installation Inspection*. (i) Ensure that all surfaces and edges of insulation board are covered in accordance with subparagraph (3)(iv) of this paragraph.

(B) Ensure that the requirements of subparagraph (3)(ii) of this paragraph have been met.

(1) *Frame Wall Exterior*—(1) *Applicability*. This section applies to the installation of organic cellular rigid board insulation to the exterior of framed walls.

(2) *Pre-Installation Inspection and Preparation*. (i) Inspect the walls to assure that they are structurally sound, and that they are free of fungus growth (dry rot). If the existing exterior wall cover is sound and free of rot, insulation can be installed over the existing siding. If the existing surface is attacked by fungus growth, remove the old siding. If the old siding is removed, assure that the structural integrity of the walls is maintained, either by the remaining cross bracing or the installation of new siding.

(ii) Remove any trim around windows, doors, corners, and at the sills as required to install the insulation.

(iii) Identify any termite shields that would be covered by the insulation. Do not install board insulation unless the termite shield is effectively extended beyond the insulation and cover to be installed.

(iv) Determine edge treatment to be given at corners, sills, windows, and doors.

(v) Identify conditions needing special attention, such as electrical outlets, utility meters, and faucets.

(3) *Installation Procedure*. (A) If the existing wood siding is sound and left in place (see subparagraph (2)(i) of this paragraph), install the insulation board with mechanical fasteners to

the wood siding in accordance with the manufacturer's instructions.

(ii) If the existing siding was removed, or if the siding consists of light gauge metal over an "insulation board" sheathing, install the organic cellular rigid insulation board with mechanical fasteners to the wall studs or to an existing wood sheathing in accordance with the manufacturer's instructions.

(iii) Do not install insulation board in contact with flues, chimneys, or appliances that could reach temperatures above 150° F.

(iv) Cover the insulation board with a suitable weather resisting exterior finish, such as aluminum or vinyl siding, wood or asbestos shingles, or metal lath and stucco.

(v) Attach the cover through the insulation board to an existing wood siding or sheathing to the wood frame studs; or attach furring strips or a plywood nailer through the insulation board to the stud wall and attach the finish to the strips or nailer.

(vi) Install flashing and trim at windows, doors, corners, and sills so as to preclude the penetration of water into the wall cavity.

(vii) Flash and seal around any obstructions such as at water faucets and electrical outlets.

(viii) Provide weep holes at the sill plate as required.

(ix) Where insulation board is installed on walls which have cavity insulation, provide for moisture control in accordance with paragraph (d)(4) of this section.

(4) *Post-Installation Inspection*. (i) Ensure that the installation meets the provisions of subparagraph (3)(iii) of this paragraph.

(ii) Ensure that all surfaces of insulation board are covered with a suitable weather resisting finish material.

(iii) Ensure that joints in trim, flashing, and protective cover at windows, doors, corners, faucets, and electrical outlets are tight and sealed as required.

(iv) Ensure that weep holes are provided as required and are free from clogging material.

(m) *Masonry Wall Exterior*—(1) *Applicability*. This section applies to the installation of organic cellular rigid board insulation to the exterior of masonry or masonry veneer walls.

(2) *Pre-Installation Inspection and Preparation*. (i) Inspect the walls to assure that they are structurally sound and free of grease, loose paint, or loose material.

(ii) Remove any trim around windows, doors, corners, and at the sill as required to install the insulation.

(iii) Identify any termite shields that would be covered by the insulation. Do not install board insulation unless the termite shield is effectively extended

beyond the insulation and cover to be installed.

(iv) Determine edge treatment to be given at corners, sills, windows, and doors.

(v) Identify conditions needing special attention, such as electrical outlets, utility meters, and faucets.

(3) *Installation Procedure.* (i) Attach the insulation board to the wall as recommended by the manufacturer.

(ii) Do not install the insulation board in contact with flues, chimneys, or appliances that could reach temperatures above 150° F.

(iii) Cover the insulation board with a suitable weather resistant exterior finish, such as aluminum or vinyl siding, wood or asbestos shingles, or metal lath and stucco.

(iv) Fasten the cover through the insulation board onto the masonry wall; or secure furring strips or a plywood nailer base through the insulation board onto the masonry wall and attach the finish to the strips or nailer base.

(v) Install flashing and trim at windows, doors, corners, and sills so as to preclude the penetration of water.

(vi) Flash and seal around any obstructions such as at water faucets and electrical outlets.

(vii) Provide weep holes at the sill plate as required.

(4) *Post-Installation Inspection.* (i) Ensure that the requirements of subparagraph (3)(ii) of this paragraph have been met.

(ii) Ensure that the insulation board has been properly covered as required in subparagraph (3)(iii) of this paragraph.

(iii) Ensure that all required flashing and sealing has been provided.

(iv) Check that all necessary weep holes at the sill plate have been provided and are unobstructed.

(n) *Roof Exterior.*—(1) *Applicability.* This section applies to the installation of organic cellular rigid board insulation to the exterior of sloped roofs. This section does not apply to roofs over unheated attics.

(2) *Pre-Installation Inspection and Preparation.* (i) Inspect the roof to assure that it is structurally sound. Sagging of the roof sheathing indicates an unsound roof.

(ii) One layer of existing roofing may be left in place or may be removed. If there are two or more layers of roofing, remove all roofing.

(iii) Install nailers the thickness of the insulation board along all edges and along the ridge.

(3) *Installation Procedure.* (i) Install insulation board as recommended by the manufacturer. Use an application method which fastens the insulation to the roof sheathing. Do not use adhesive to fasten the insulation to shingles or roofing felt only.

(ii) Do not install insulation board in contact with flues or chimneys that could reach temperatures above 150° F.

(iii) Depending on thickness, density, and compressive strength of the board, overlay the insulation with roofing felt or install a plywood base to the top of the insulation board, nailing it through the insulation board to the roof sheathing and cover the plywood with roofing felt. A plywood base is also required by some local building codes.

(iv) Finish the exterior with roofing following the manufacturer's instructions. Use nails long enough to penetrate into the plywood overlay or through the insulation board into the existing wood sheathing.

(v) Install all flashing, gutters, and trim as required.

(4) *Post-Installation Inspection.* (i) Ensure that the insulation board was not installed in contact with flues or chimneys that could reach temperatures in excess of 150° F.

(ii) Ensure that the new finished roofing covers the entire insulation roof.

(iii) Ensure that all flashing is properly installed, particularly at dormers, chimney, or where the roof adjoins vertical wall sections.

§ 456.907 Standard Practice for the Installation of Mineral Cellular Loose-Fill Thermal Insulation.

(a) *Scope.* (1) This practice covers the installation of perlite and vermiculite mineral cellular loose-fill thermal insulation.

(2) This practice applies only to the installation of mineral cellular loose-fill thermal insulation in attic floors and various masonry cavities (concrete block, block-brick veneer, and masonry walls wherein the wall cavity opens into the attic) by means of pouring application. It does not apply to installation by pneumatic machinery processes.

(3) This practice covers the installation process from pre-installation inspection through post-installation inspection. It does not cover the production of the insulation materials.

(4) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice. 000

(5) This practice is not intended to supersede the authority of local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(6) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of thermal insulating ma-

terials or, in the alternative, that the person supervising the installer have such knowledge. It also requires an understanding of the fundamentals of residential construction that affect the installation of insulation.

(7) This practice covers aspects of installation relating to the effectiveness, durability, and safety of insulation in service.

(8) This practice provides minimum requirements that will help to ensure the installation of insulation in a safe and effective manner. It must be noted that actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to assure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of insulation depend not only on the quality of the insulating materials but also on their proper and workmanlike installation.

(2) Improper installation of insulation may reduce its thermal effectiveness, contribute to fire hazards and other unsafe conditions, and promote deterioration of the structure in which it is installed.

NOTE 1.—Specific hazards that can result from improper installation includes:

a. Deterioration or failure of electrical wiring components and heat buildup caused by overfused electrical circuits or by exposed metal wire conductors, when wiring is encapsulated in thermal insulation;

b. Fire caused by heat buildup from recessed lighting fixtures covered by insulation;

c. Flame spread on exposed flammable vapor barriers; and

d. Deterioration of wood structures, paint failures, and corrosion of metal fasteners and electrical components caused by prolonged moisture accumulation within building components.

(c) *Ere-Installation Inspection and Preparation.*—(1) *General.* (i) Identify all recessed lighting fixtures (including wiring compartments and ballasts), motors, fans, blowers, heaters, furnaces, and other heat producing devices in all areas where insulation is to be installed.

(ii) Install blocking, such as wood, metal, unfaced mineral wool batts, or non-flammable rigid cardboard, around items identified in subdivision (i) of this subparagraph to permanently maintain a 3-inch minimum air space all around them. Install blocking at least as high as the height of the finished insulation. Do not cover recessed lighting fixture enclosures, or their wiring compartments and ballasts, so as to entrap heat and prevent the free circulation of air unless the fixture(s) are otherwise approved for the purpose.

(iii) Install necessary blocking so that all devices which may require maintenance or servicing remain ac-

cessible after the insulation is installed.

(iv) Inspect the siding, roof, walls, ceilings, and attic floors to identify areas where a previous moisture problem has caused paint peeling, warpage, stain, fungus growth, rotting, or other structural damage. Do not install insulation in such areas unless these conditions and their source(s) have been corrected.

(v) Block all openings in ceilings, floors, and sidewalls through which the insulating material may escape. Seal all wall cavities which open into a basement or crawl space before wall insulation is installed.

(vi) Determine the structural soundness and strength of walls or ceilings. Do not install insulation in areas too weak to withstand the pressures or loads created by the filling process unless such condition has been corrected.

(2) *Attics and Ceilings.* (i) Identify and measure ventilation area in attics. Do not install insulation in attics unless ventilation openings in attic areas conform to one of the following requirements or arrangements have been made to conform to these requirements within six months from the date of installation:

(A) 1 ft² minimum of free ventilation

area per 150 ft² of attic floor area, if no vapor barrier exists in the attic:

(B) 1 ft² minimum of free ventilation area per 300 ft² of attic floor area if a vapor barrier does exist;

(C) 1 ft² minimum of free ventilation area per 300 ft² of attic floor space if at least 50 percent of the required ventilating area is provided with fixed ventilation located in the upper portion of the space to be ventilated (at least three feet above eave or soffit vents) with the remainder of the required ventilation provided by eave or soffit vents.

NOTE 2. Screens or louvers which cover ventilation openings reduce the free ventilation area. Most metal louvers have the free ventilation area stamped on their frame. If the free ventilation area of louvers is not known, assume that it is half of the area of the ventilation opening and increase the opening accordingly.

(ii) Ensure that all ventilation openings have suitable louvers or screens to prevent rain or snow from entering the attic.

(iii) For buildings located in Zones I and II of Figure 1, if there is no existing insulation or if existing insulation is to be removed, provide a vapor barrier membrane on the upper surface of the ceiling material. Never install a vapor barrier on top of existing insulation.

NOTE 3.—For buildings in Zones I and II of Figure 1, where there is existing ceiling insulation and no vapor barrier, it is *recommended* that a vapor barrier such as paints and wall coverings which are labeled by the manufacturer as having a perm rating of one (1) or less and are applied in strict accordance to the manufacturer's instructions be installed in the interior surface of bathrooms and unvented kitchens and laundry areas. It is also *recommended* that all cracks and penetrations on the interior ceiling surface of these rooms (such as around lighting fixtures and at wall and ceiling joints) be caulked.

NOTE 4.—The above requirements for moisture control are minimum requirements needed to prevent long term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking as described above on the ceiling of all rooms or by additional ventilation of the occupied space.

a. Homes with an area of less than 800 square feet,

b. Homes with less than 250 square feet per occupant,

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors.

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(iv) If a vapor barrier membrane is installed, tape all tears, penetrations, and all joints which are not overlapped by at least three (3) inches.

(v) Install blocking around attic doors and bathroom, kitchen or similar vents which open into the attic, if the level to which the insulation will be installed exceeds their height.

NOTE 5.—Ensure that blocking is installed around vent openings in a manner that enables the free movement of air through the vent into the attic.

(vi) Install blocking to restrain loose-fill insulation from clogging soffit vents at the eaves restricting attic ventilation. Install blocking so as to ensure free movement of air through soffit vents into the attic.

(vii) Cover all bathroom and kitchen vents which open into the attic with temporary blockings prior to the installation of insulation to assure that no insulation material falls into the vents.

(d) *Installation Procedure.* (1) Do not install insulation unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, were eliminated.

(2) Handle all insulation material in accordance with manufacturer's instructions and keep it dry and free of extraneous materials.

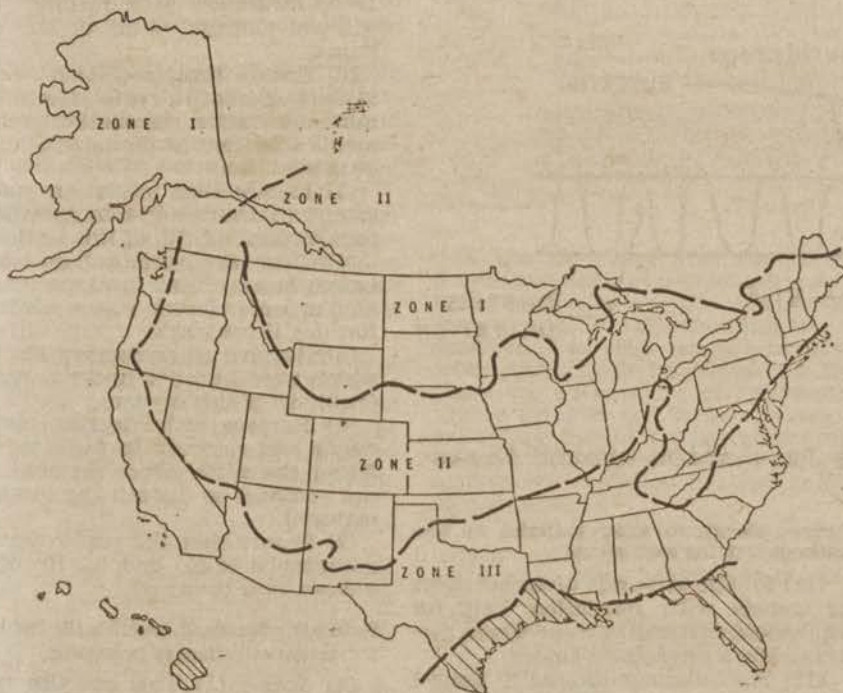


Figure 1. Condensation Zones in the United States

(3) Install insulation so that it will not be in contact with the ground or other sources of water.

(4) Install insulation only between conditioned and unconditioned spaces.

(5) When installing insulation above gypsum board ceilings or above existing insulation which is resting on a gypsum board ceiling, do not install an amount of new insulation which would cause the total weight of the existing insulation and new insulation per square foot of ceiling area to exceed the loads specified in Column 3 of Table 1.

TABLE 1.—Maximum Allowable Loads

(1) Gypsum board ceiling thickness	(2) Frame spacing	(3) Total allowable load
1/2"	24" O.C.	1.3 psf
5/8"	16" O.C.	2.2 psf
3/4"	24" O.C.	2.2 psf

NOTE 6.—For ceilings other than gypsum board, establish the allowable load by acceptable engineering principles and do not install insulation in excess of the established total allowable load.

(6) Fill all wall cavities completely in accordance with the manufacturer's recommendations.

(7) When installing insulation in the

cavity of an enclosed attic floor, remove the floor to facilitate proper installation and coverage.

(8) Install insulation on ceilings or floors in such a manner that the electrical wires' temperature under prolonged normal rated loading conditions does not exceed the values specified in the National Electrical Code (Table 310-16 through 19, latest edition) for that particular type of wiring (see Appendix B): *Provided*, The circuit has proper overcurrent protection.

(9) The requirement of subparagraph (8) of this paragraph is deemed to be met if exposed wiring in attics is treated as indicated in Subdivisions (i), (ii) and (iii) of this subparagraph.

(i) Place insulation in attics to a uniform depth up to the underside of electrical wiring. Do not cover electrical wiring; or,

(ii) Place permanent barriers which exceed the height of the insulation around the sides of wires and below such wires. The barrier should form a three inch wide air space which will permanently restrain the thermal insulation from covering the electrical conductor(s). The barrier material must be consistent with local code requirements for durability, safety, fire, moisture resistance, and rodent and fungus protection. See figure 2.

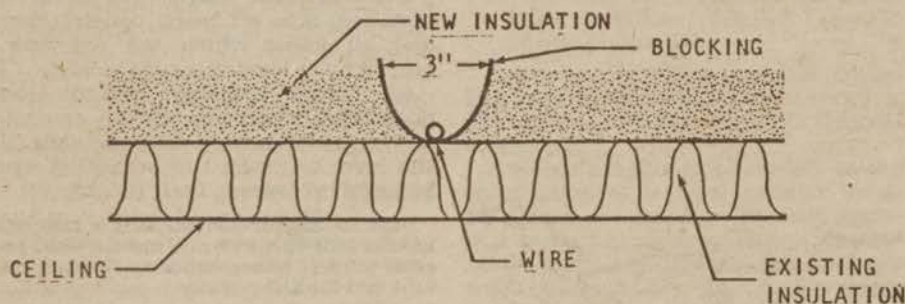


Figure 2. Installing Insulation Around Wires

NOTE 7.—Do not handle electrical wiring with exposed metal conductors or brittle electrical insulation.

(iii) The requirements of divisions (i) and (ii) of this subparagraph do not apply to single wires which are attached parallel along the joist: *Provided*, That the circuit has properly rated overcurrent protection.

(10) Pour the insulating material into the spaces and cavities to be insulated.

NOTE 8.—A minimum amount of impact and working of the material should take place to minimize crushing of the cellular material and the formation of dust. Pouring in masonry wall cavities should be per-

formed slowly to allow material to flow without creating restrictions.

(11) Fit the attic side of access doors or panels with insulation batt (or equivalent material) except where prevented by a retractable ladder.

(12) For buildings located in Zone I of Figure 1, provide a vapor barrier on the interior surface of all bathrooms and unvented kitchens and laundry areas. Caulk or seal all major cracks in the exterior walls of these rooms including joints between the floor and wall (except where impractical because of carpeting), between wall and ceiling, at joints around window frames, and around wall penetrations

for electrical services (outlets and switches) and plumbing stacks.

NOTE 9.—It is recommended that a vapor barrier and caulking, such as described in this section, also be provided in the buildings in Zone II of Figure 1.

NOTE 10.—The above requirements for moisture control are minimum requirements needed to prevent long term moisture damage. Homes which are characterized by one or more of the following are more likely to experience excessive moisture accumulation which can be corrected by application of a vapor barrier and caulking in all ceiling areas as described above and/or additional venting of the wall cavity from the exterior or by additional ventilation of the occupied space.

a. Homes with an area of less than 800 square feet,

b. Homes with less than 250 square feet per occupant,

c. Homes with tight wall and ceiling construction and weatherstripped windows and doors,

d. Electrically heated homes or homes with a heating system which uses outside combustion air.

A relative humidity indicator may be installed to monitor the humidity level and determine when excessive moisture accumulation is likely to occur.

(e) *Post-Installation Inspection and Procedures.* (1) Inspect the coverage and depth of the insulation. Fill all "pockets" and voids in the insulation. Level insulation in a manner which will not damage wiring or any other items.

(2) Ensure that insulation does not restrict the soffit vents affecting the minimum attic ventilation requirements specified in paragraph (c)(2)(i) of this section.

(3) Ensure that insulation material is not in the air spaces specified in paragraph (c)(1)(iii) of this section.

(4) Clear all electric wall outlets and switch boxes of any insulation material. Turn off electric power while performing these tasks.

(5) Remove all temporary blockings which were installed under paragraph (c)(2)(vii) of this section.

(6) Replace attic flooring material which was removed to facilitate insulating the attic. Floor material shall not compact or disturb the insulating material.

(7) Ensure that the requirements of paragraphs (d)(9) and (d)(10) of this section have been met.

§ 456.908 Standard practice for the installation of reflective insulation.

(a) *Scope.* (1) This practice covers the installation of reflective (aluminum foil) insulation under floors of heated spaces that are over unheated crawl spaces and unheated basements.

(2) This practice covers the installation of reflective insulation from pre-installation inspection through post-installation inspection. It does not cover the production of the insulation material.

(3) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(4) This practice is not intended to supersede the authority of state or local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(5) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of reflective insulating materials or, in the alternative, that the person supervising the installer have such knowledge. It also requires an understanding of the fundamentals of residential construction that affect the installation of insulation.

(6) This practice covers aspects of installation relating to the effectiveness, durability, and safety of insulation in service.

(7) This practice provides minimum requirements that will help to ensure the installation of insulation in a safe and effective manner. Actual conditions in existing buildings vary greatly and in some cases substantial additional care and precautions may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of insulation depend not only on the quality of the insulating materials, but also on their proper and workmanlike installation.

(2) Improper installation of insulation may reduce its thermal effectiveness, cause electrical hazards and other unsafe conditions, and promote deterioration of the structure in which it is installed.

(c) *Pre-Installation Inspection and Preparation.* (1) Identify and examine all visible wiring, junction boxes, and other metallic or electrical equipment in the areas where insulation is to be installed. Do not install reflective insulation if the wiring is found to have frayed, cracked, deteriorated or missing electrical insulation.

(2) Ensure that all electrical equipment in the building is grounded. Do not install reflective (aluminum foil) insulation in a building in which electrical equipment is not grounded.

(3) Identify air supply and return ducts, pipes, electrical wires and other obstructions located in spaces between floor joists over crawl spaces and unheated basements. Ground all metallic heating and air conditioning ducts which may come in contact with the installed insulation. Do not install reflective insulation where metallic

heating and air conditioning ducts are not grounded.

NOTE 1.—Repairs or replacement of electrical wiring to eliminate defects identified in Paragraph (1) as well as all other electric-related activities are to be carried out only by personnel approved for such work.

NOTE 2.—Insulation of floors over unheated spaces will cause these spaces to be colder. Accordingly, appropriate measures may need to be taken to keep water pipes from freezing during colder weather.

(4) Measure the width of the spacing between floor joists to determine the correct width of the insulation required to meet the manufacturer's installation instructions.

(5) Measure the length of runs between obstructions and cut the insulation in a manner which will minimize the number of joints.

(6) When installing reflective insulation beneath floors over crawl spaces, cover the ground surface with a ground cover which acts as a vapor barrier (such as 6-mil polyethylene sheeting lapped at the joints and securely taped with duct tape to the interior surface of the crawl space foundation walls).

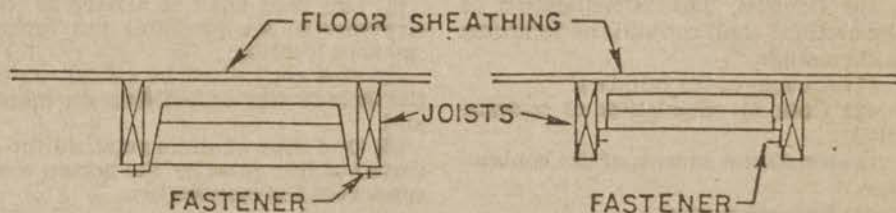


FIG. 1

FIG. 2

(3) Use aluminum, stainless steel, or plastic fasteners of a type and spacing recommended by the insulation manufacturer. Assure that the reflective insulation is in close contact with the joists along both its edges and that there are no wrinkles or fishmouths. Where wrinkles and/or fishmouths do exist, tape the joint between the insulation and joist, or between adjacent sections of insulation in flush mounted installations.

(4) Avoid joints within the length between joist supports or basement walls. Seal joints which are required with tape.

(5) Tightly seal the ends of reflective insulation at floor support and basement walls against the supports and walls with tape.

(6) Seal all punctures in the reflective insulation by taping reflective material to the damaged area.

(7) Closely fit insulation around plumbing and other obstructions and tape securely to eliminate gaps through which air may pass into the reflective air spaces.

(7) Where practical in crawl spaces provide a free ventilation area of one square foot for every 1,500 square feet of the ground area before insulation is applied. Provide cross-ventilation where possible.

NOTE 3.—Where screens or louvers cover ventilation openings the free ventilation area is reduced. Most metal louvers have the free area stamped on their frame. If the free ventilation area of the louvers is not known, assume that it is half of the area of the ventilation opening and increase the opening accordingly.

(8) Ensure that reflective surfaces are free of dirt, oil film, and other surface coatings before installation. These coatings can reduce the effective reflectance of the surfaces.

(d) *Installation Procedures.* (1) Do not install reflective insulation unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(2) Mount reflective insulation in a flush (see Figure 1) or recessed (see Figure 2) application depending on the space available.

(8) Ensure that where the material is installed to form multiple reflective air spaces, the spaces are, at a minimum, $\frac{3}{4}$ of an inch in height. Maintain the distance between reflective surfaces as uniformly as possible.

NOTE 4.—Reflective surfaces must not touch each other or the thermal performance of the insulation will be reduced.

(e) *Post-Installation Inspection.* (1) Ensure that the reflective insulation provides a continuous and unbroken surface between joists, that no gaps, tears, and other openings exist, and that all joints are tightly taped.

§ 456.909 Certification Procedures for the Installation of Thermal Insulation Materials.

(a) Upon completion of each installation of thermal insulation materials performed under the circumstances described in the State Plan pursuant to § 456.305, the person responsible for carrying out such installation shall complete, in triplicate, a "Certification of Insulation" form such as exhibited in Figure 1.

PART I - GENERAL					
ADDRESS OF RESIDENCE:			NAME AND ADDRESS OF CONTRACTOR:		
DATE OF INSTALLATION COMPLETION: _____					
PART II - AREAS INSULATED					
WALLS (sq. ft.)		CEILINGS (sq. ft.)		FLOORS (sq. ft.)	
TYPE OF INSULATION:		TYPE OF INSULATION:		TYPE OF INSULATION:	
MANUFACTURER:		MANUFACTURER:		MANUFACTURER:	
R VALUE INSTALLED	AMOUNT INSTALLED	R VALUE INSTALLED	AMOUNT INSTALLED	R VALUE INSTALLED	AMOUNT INSTALLED
PART III - CERTIFICATION					
I, _____ (PRINT NAME) certify that the residence identified in PART I was insulated as specified in PART II and the installation was conducted in conformance to applicable codes, standards, and regulations.					
_____ Authorized Signature					

Figure 1. Certification of Insulation

(b) *Content.* The "Certification of Insulation" shall contain the following information:

- (1) Address of the building;
- (2) Date of completion of installation;
- (3) Name and address of the contractor;
- (4) Insulation type;
- (5) Insulation manufacturer;
- (6) Location and dimension (in square feet) of each space which was insulated;

(7) The amount of insulation which was installed in each of the locations identified in subparagraph (6) of this paragraph, given in the units in which the material is most commonly available (i.e., the number of batts, bags, etc., of a specified size or the number of square feet, etc.);

(8) The R value installed in each of the locations identified in subparagraph (6) of this paragraph;

(9) A statement, signed by an authorized individual, certifying that the installation was carried out in conformance to the applicable standard practices, codes and regulations.

(c) *Distribution and Posting Requirements.* The "Certification of Installation" shall be distributed and posted as follows:

(1) One copy shall be affixed to the structure in an accessible but inconspicuous location;

(2) One copy shall be submitted to the homeowner or building occupant; and

(3) One copy shall be retained for a period of five years by the person who conducted the installation.

§ 456.910 Standard Practice for the Installation of Storm Windows, Thermal Windows, Multi-Glazing Units and Storm Doors and Thermal Doors.

(a) *Scope.* (1) This practice covers the installation of storm windows, thermal windows, multi-glazing units, storm doors and thermal doors.

(2) This practice applies to wood, metal, and plastic framed storm windows or thermal windows, sealed multi-glazing units, non-sealed multi-glazing systems, storm doors and thermal doors. This practice also applied to multi-glazing systems which include heat absorbing or heat reflective glazing.

(3) This practice covers the installation process from pre-installation inspection through post-installation inspection. It does not cover the fabrication or assembly of units whether such fabrication takes place in a factory or at the installation site.

(4) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(5) This practice is not intended to supersede the authority of state and local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(6) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of storm windows, thermal windows, and multi-glazing and storm doors or, in the alternative, that the person supervising the installer have such knowledge. It also requires familiarity with caulking and sealing and with glass handling procedures, painting where applicable, and an understanding of the fundamentals of residential construction that affect the installation of these units.

(7) This practice covers aspects of installation relating to the effectiveness, durability, and safety in service.

(8) This practice provides minimum requirements that will help to ensure the installation of storm windows, thermal windows, multi-glazing and storm doors in a safe and effective manner. Actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of installed units depend not only on the choice and quality of materials, design, adequacy of assembly and support system, but also on their proper and workmanlike installation.

(2) Improper installation of units may reduce their thermal effectiveness, lead to excessive condensation and promote the deterioration of wall constructions, windows, doors, and their respective finishes. Additionally, improper installation of metal units may result in accelerated corrosion of the metal frames, trim, anchors, fasteners, and finishes. Also, unsafe conditions are created when warping of frames requires excessive force for operation.

(c) *Definitions.* Technical terms used in this practice which are not defined in § 456.902 are illustrated in Figures 1 through 3.

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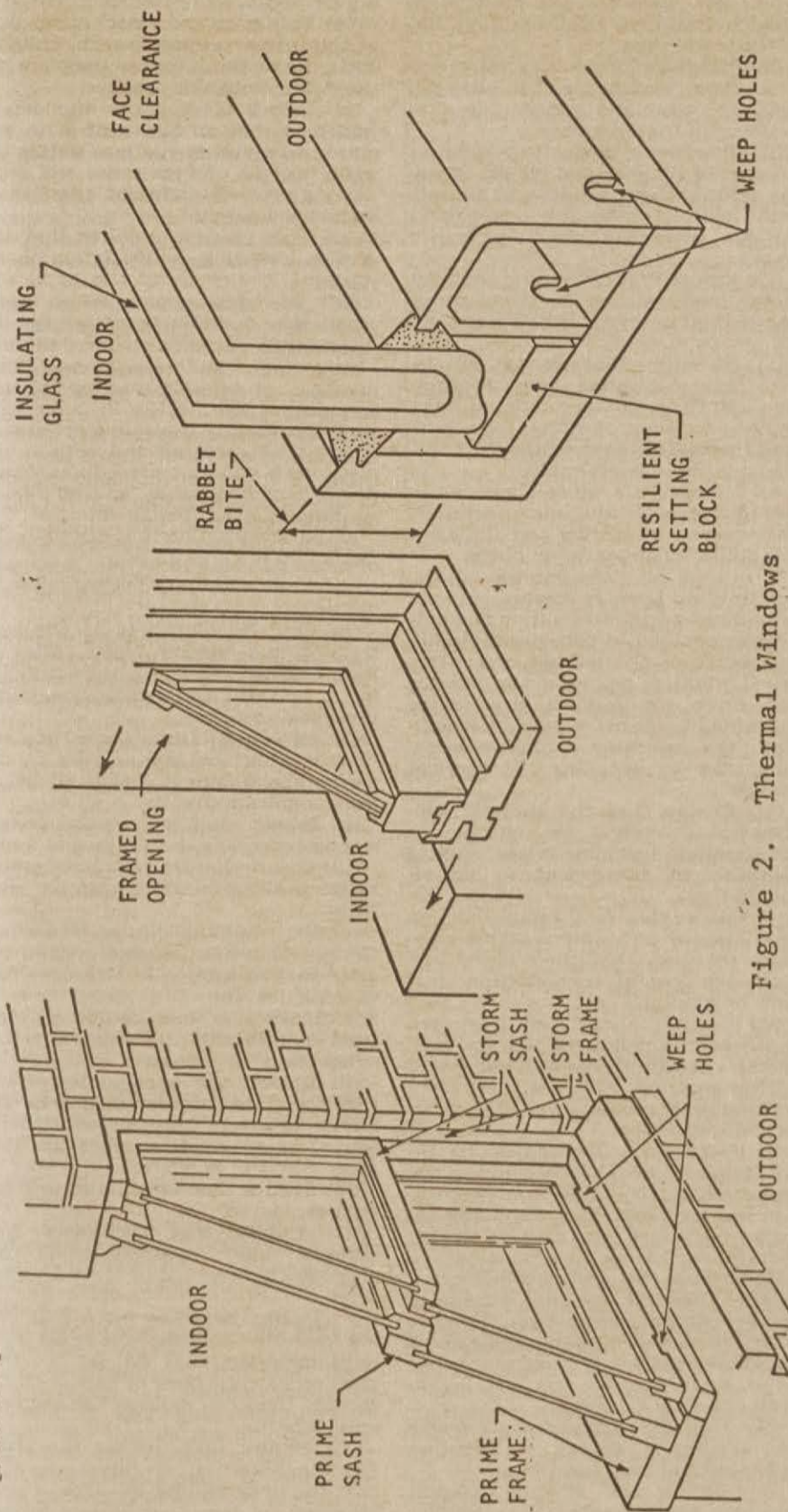


Figure 2. Thermal Windows

Figure 3. Multi Glazing

Figure 1. Storm Windows

[6450-01-M]

(d) *Safety Precautions.* (1) Do not install window or door devices which would restrict means of egress which are required by applicable codes and regulations.

(e) *Storm Window—(1) Pre-installation Inspection and Preparation.* (i) Examine the framing of the prime window to ensure that it is sound, free of decay, and will provide secure anchorage for the storm window frames.

(ii) Ensure that the frame contact areas are free of protrusions that would interfere with proper installation of the storm windows.

(iii) Measure the prime window or its opening in accordance with the manufacturer's instructions, measuring and noting if it is out of square or not in plane.

(iv) Ensure that the storm window is the correct size and type for the opening, including tolerances and provisions for adjustment to "out-of-square-ness."

NOTE 1. Aesthetically, it is desirable that the meeting rails or stiles of storm windows align with the meeting rails or stiles of the prime window.

(v) Ensure that the storm window has not been damaged during shipping or assembly.

(vi) Ensure that all edges of wooden storm windows have been finished with a sealer to prevent swelling or warping.

(vii) Ensure that exterior storm windows have adequate weep holes.

(2) *Installation Procedures.* (i) Do not install storm windows unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, were eliminated.

(ii) Seal any edges of wood storm window frames that were cut or planed to fit the unit into the opening.

(iii) Position storm windows to provide a minimum gap of 1/2 inch (13 mm) between the prime and storm glass.

(iv) Where both the storm and prime windows are metal, either position the storm window frame so that it does not contact the prime window frame or secure a nonmetallic spacer between the prime and storm window frames.

NOTE 2. The following materials are examples of acceptable spacers: 1/4 inch (6.4 mm) thick spacers of wood, vinyl, rubber, or high density polyurethane.

(v) Secure aluminum storm windows only with aluminum or stainless steel fasteners to avoid galvanic corrosion.

(vi) In exterior installed storm windows, seal the joints at jambs and head to resist rain penetration.

(vii) Seal indoor storm windows to provide greater air tightness than that of the prime window.

(3) *Post-Installation Inspection and Procedures.* (i) Ensure that all weep holes are clear and provide complete drainage of the sill area.

(ii) Check removable storm windows for ease of removal and reinstallation. Ensure that storm windows fit snugly with minimal apparent opportunity for air leakage through perimeter cracks.

(iii) Ensure that operable storm sash moves freely within the storm frame and that all hardware operates properly.

(f) *Thermal Windows—(1) Pre-Installation Inspection and Preparation.* (i) Examine the existing window opening for signs of decay. Do not install thermal windows where the framing material is deteriorated.

(ii) Measure the window opening in accordance with the manufacturer's instructions, measuring and noting if it is out of square or not in plane.

(iii) Check for water damage to interior finishes. If water damage is found to be caused by leakage from the outside, as opposed to condensate, locate the source of the leakage and establish whether replacing the window will correct the problem. If replacing the window will not correct the problem, take necessary corrective measures prior to installing the thermal window.

(iv) Ensure that the thermal windows are the correct size and type for the openings, including tolerances and provisions for adjustments to "out-of-square-ness".

(v) Ensure that no thermal windows are damaged and, where sealed glass units are used, that their inside surfaces are free of condensation, fogging, or staining.

(vi) Ensure that the frames are free of any burrs or splinters, that the sash operates freely within the frame and latches securely, and that the weatherstripping is properly installed in all locations specified.

(2) *Installation Procedures.* (i) Do not install thermal windows unless the preinstallation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(ii) Remove the existing window in a manner that will minimize damage to the remaining construction. Remove all fasteners and clear the frame opening of obstructions or protrusions that would interfere with the installation of the thermal window.

(iii) Examine exposed wall frame and remaining window construction and replace unsound material.

(iv) Where the existing window openings are reframed to a smaller size, insulate the voids between fram-

ing members and the window. Install a vapor barrier on the winter warm side of the insulation and provide interior and exterior coverings compatible with the existing construction.

(v) Install flashing at the head, jambs, and sill of the window as required to preclude the penetration of water into the wall cavity.

(vi) Anchor the unit in accordance with the manufacturer's instructions. Ensure that clearances specified in the manufacturer's instructions are maintained.

(vii) For aluminum units use only aluminum or stainless steel anchors and fasteners.

(viii) Shim the thermal window as necessary to ensure it is plumb, square and level.

(ix) Separate metal thermal window from incompatible materials (such as siding or frames of dissimilar metals) in the structure or frame with a non-metallic spacer (see Note 2).

(x) Pack all gaps of 1/4 inch (6.4 mm) or more with backup or filler materials such as nonabsorbing foam or sponge before installing sealant.

(xi) Seal the joints between the wall framing and window frame, using a high quality caulk such as acrylic, butyl, polyethylene, polysulfide, polyurethane, or silicone.

(3) *Post-Installation Inspection.* (i) Ensure that the sash moves freely within the frames and that all hardware operates correctly.

(ii) Ensure that the window frame and sash are square, plumb, and level.

(iii) Ensure that all weatherstripping makes full contact with mating surfaces.

(g) *Multi-Glazing—Sealed Insulating Glass.* (1) *Pre-Installation Inspection and Preparation.* (i) Measure the opening for the multi-glazed unit in accordance with the manufacturer's instructions. Measure and note if it is out of square or not in plane.

(ii) Inspect the opening to ensure that there are no burrs, dirt, or deformation of glazing channels which may cause stress concentrations in the glass.

(iii) Ensure that weep holes or slots are not clogged.

(iv) Ensure that clearances and nominal "bite" (containment of the glass) are as specified by the manufacturer.

(v) During handling place cushioning material between the glass and hard materials, and do not set the glass on hard surfaces or turn it on its corners. This can damage the glass or seal, or both.

(vi) Ensure that neither the glass nor the edge seal are damaged, and that the units exhibit no signs of fogging and condensation. Do not install defective units.

(2) *Installation Procedures.* (i) *Free Glazed Systems.*

(A) Do not install multi-glazing sealed insulating glass units unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, were eliminated.

(B) Prior to setting the glass, place two identical setting blocks of a resilient material at the quarter points of the glass. Use blocks that are narrower than the full channel width but that are at least 1/16 in. (1.6 mm) wider than the insulating glass and high enough to ensure minimal edge clearance but provide required bite for the glass.

NOTE 3. Install insulating glass units containing heat absorbing or reflective glass so that the heat absorbing or reflective sheet is the outermost sheet. This allows the heat absorbing glass to radiate the greater part of absorbed heat to the outdoors, and the reflective glass to reflect the greater part of the impinging solar radiation to the outdoors. Follow all additional precautions for installation prescribed by the manufacturer of the heat absorbing or reflective glass.

(C) Where necessary, set jamb blocks in place before installing glass to ensure proper horizontal positioning of the glass. Maintain recommended clearances and bite.

(D) Use only continuous resilient spacers to maintain face clearances. Do not use intermittent shims.

(E) Install only glazing sealants that are resilient, nonhardening compounds, tapes, or gaskets. Install only those sealants specified by the manufacturers of the unit.

(ii) *Channel (Marine) Glazed Systems.*

(A) Apply the wrap-around vinyl in one piece around the entire perimeter of the sealed insulating glass, ensuring that the glass is engaged by the full channel depth of the wrap-around vinyl. Ensure that the seam in the wrap-around vinyl occurs at the head of the unit.

(B) Clip off corner bulges of wrap-around vinyl to provide a continuous flush surface.

(C) Install glazing compounds and gaskets with a slope to ensure rainwater runoff.

(D) See Note 3 with respect to heat absorbing or heat reflective glass.

(3) *Post-Installation Inspection.* (i) Ensure that weep holes are not blocked.

(ii) Ensure that gaskets and sealants are properly installed.

(h) *Multi-Glazing—Unsealed Insulating Glass.* (1) Various innovative products are now being marketed that permit the installation of multi-glazing other than through the use of sealed insulating glass. Since the products, systems, and methods in such innovative applications differ widely, no generally applicable installation

instructions can be given. However, the principles given under paragraphs (e), (f), and (g) of this section must be considered and the manufacturer's installation instructions followed.

(i) *Storm Doors—(1) Pre-Installation Inspection and Preparation.* (i) Examine the framing of the prime door to ensure that it is sound, free of decay, and provides secure anchorage for the storm door.

(ii) Ensure that the frame contact areas are free of protrusions that would interfere with proper installation of the storm door.

(iii) Measure the door opening in accordance with the manufacturer's instructions, measuring and noting if it is out of square or not in plane.

(iv) Ensure that the storm door is the correct size and type for the opening, including tolerances and provisions for adjustment to "out-of-square-ness."

(v) Ensure that the storm door has not been damaged.

(vi) Ensure that adequate weepage is provided on exterior storm doors.

(2) *Installation Procedure.* (i) Do not install storm doors unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(ii) If required for proper fit, adjust the storm doors or their frames to the size and "out-of-square-ness" of prime door frames.

(iii) If a wood storm door requires planning or cutting of the wood frame or door, finish the cut edges with a sealer to prevent swelling and warping.

(iv) Anchor the storm doors to the framed openings in accordance with the manufacturer's instructions. Secure aluminum storm doors only with aluminum or stainless steel fasteners to avoid galvanic corrosion.

(v) Install the door catches, closers, and chains in accordance with the manufacturer's instructions.

(vi) Install weatherstripping in accordance with the manufacturer's instructions.

(vii) Maintain a gap of at least 1/8 in. (1.6 mm) between the storm door and the frame openings unless otherwise specified by the manufacturer.

(viii) For an expander type aluminum storm door, ensure that the expander edges are flush with the frame opening. Secure the expander edges using hardware and fasteners compatible with aluminum.

(ix) Do not use excessive force when installing the storm door frame of a pre-hung door into the door opening. Seal the joint between the storm door frame of a pre-hung storm door and the framed opening to prevent rain penetration.

(3) *Post-Installation Inspection and Procedures.* (i) Ensure that adequate

drainage is provided to prevent water accumulation at the sill.

(ii) Ensure that the storm door operates freely and does not bind when closed.

(iii) Ensure that the weatherstripping is installed properly and forms a weathertight seal.

(iv) Ensure that the closer and chain assemblies operate properly, that the door handles and latch assemblies properly secure and lock the storm door, and that hardware of the storm doors does not interfere with the operation of the prime doors.

(j) *Thermal Doors—(1) Pre-Installation Inspection and Preparation.* (i) Examine the framing of the prime door to ensure that it is sound, free of decay or corrosion, and provides secure anchorage for the thermal door and frame.

(ii) Ensure that the frame contact areas are free of protrusions that would interfere with the proper installation of the thermal door and frame.

(iii) Measure the door opening in accordance with the manufacturer's instructions, measuring and noting if it is out of square or not in plane.

(iv) Ensure that the thermal door is the correct size and type for the opening, including tolerances and provisions for adjustment to "out-of-square-ness."

(v) Ensure that the thermal door has not been damaged.

(2) *Installation Procedure.* (i) Do not install thermal doors unless the pre-installation inspection and preparation has been carried out and any defects which were identified, as well as their causes, have been eliminated.

(ii) If required for proper fit, adjust the thermal door frame by shimming the frame to the size and "out-of-square-ness" of the door opening.

(iii) Anchor the thermal door frame to the door openings in accordance with the manufacturer's instructions. Secure steel thermal door frames with steel fasteners and aluminum thermal doors with aluminum fasteners to avoid galvanic corrosion.

(iv) Do not use excessive force when installing the thermal door frame of a pre-hung door into the door opening. Seal the joint between the thermal door frame of a pre-hung thermal door and the framed opening to prevent rain penetration.

(v) Anchor the thermal door to the framed opening in accordance with the manufacturer's instructions.

(vi) Maintain a gap of at least 1/8 in. (1.6 mm) between the thermal door and the framed opening unless otherwise specified by the manufacturer.

(vii) If the sill does not seal tightly against the bottom cap of the thermal door replace the sill.

(3) *Post-Installation Inspection and Procedures.* (i) Ensure that adequate drainage is provided to prevent water accumulation at the sill.

(ii) Ensure that the thermal door operates freely and does not bind when closed.

(iii) Ensure that weatherstripping is installed properly and forms a weathertight seal.

(iv) Ensure that door catches, handles, and latch assemblies properly secure and lock the thermal door, and, where there is a storm door, that the hardware of the thermal door does not interfere with the operation of the storm door.

§ 456.911 Standard Practice for the Installation of Clock Thermostats.

(a) *Scope.* (1) This practice covers the installation of clock thermostats for controlling space conditioning systems.

(2) This practice covers the installation process from pre-installation inspection through post-installation inspection.

(3) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(4) This practice is not intended to supersede the authority of local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(5) This practice requires that the person installing the insulation have a good working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of clock thermostats and of heating and air conditioning systems in general, or in the alternative, that the person supervising the installer have such knowledge. It also requires an understanding of fundamentals of residential construction that affect the installation of clock thermostats.

(6) This practice requires that any wiring of thermostat circuits other than Class 2 circuits be carried out by an approved electrician except as noted in paragraph (e)(2) of this section.

(7) This practice covers aspects of installation relating to the effectiveness, durability, and safety of the clock thermostat in service.

(8) This practice provides minimum requirements that will help to ensure installation of the clock thermostat in a safe and effective manner. It must be noted that actual conditions in existing buildings vary greatly and in some cases substantial additional care and precaution may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that the safe and effective operation of a clock thermostat depends not only on the quality of the device but also on its proper and workmanlike installation.

(2) Improper installation of a clock thermostat may defeat the purpose of its installation, i.e., to minimize space heating and/or cooling equipment operation with minimum loss of comfort.

(3) Improper installation in applications that require electrical wiring or the addition of power supplies may result in fire hazards, electric shock, and malfunction or failure of the heating and/or cooling equipment.

(c) *Safety Precautions.* (1) Follow the manufacturer's installation instruction pertaining to safety.

(2) When the installation requires any electrical connections, additional wiring, or electrical components, disconnect any and all circuits supplying electrical power to the thermostat and electrically connected devices (i.e., heating and/or cooling unit) at the supply. Where any individuals other than the installer have access to the switches, circuit breakers, or fuses that disconnect these electrical circuits, properly mark and assure that such switches, circuit breakers, or fuses are held open and disconnected until the installation is complete.

(d) *Pre-Installation Inspection and Preparation.* (1) Determine the type of heating system which serves the residential building. Do not install a clock thermostat in any building which uses a heat pump as the primary heat source.

(2) Determine whether the thermostat circuit is a Class 2 thermostat circuit. Only an approved electrician may install a clock thermostat to a circuit which is not a Class 2 circuit. Add on/plug in clock thermostats not connected to the thermostat circuit may be installed by persons other than an approved electrician regardless of type of circuit used.

NOTE 1.—Class 2 power supply units are marked to indicate the class of supply and electrical rating.

(3) Determine whether the characteristics of the clock thermostat are compatible with the requirements of the heating and/or cooling system with regard to voltage, current ratings, and modes of operation.

NOTE 2.—One characteristic of the compatibility of the heating system and replacement clock thermostat is the heat anticipator setting. The proper setting can be determined in 3 ways:

a. Check heat anticipator setting of the existing thermostat and adjust the heat anticipator setting of the replacement thermostat to the same setting.

b. Consult the manufacturer of the heating system.

c. Measure the current through the thermostat circuit and place the heat anticipa-

tor setting of the replacement thermostat to the same setting.

(4) When the clock thermostat is to be installed in a location other than that of the thermostat which it replaces, locate the device between 4 and 5½ feet above floor level and not near a heat source such as in direct sunlight, near lamps, fireplaces, stoves, heat registers, radiators, heat-producing appliances or on walls with heating ducts, steam, or hot water pipes directly behind them; or near cold areas such as outside walls, windows, areas subject to drafts, walls of unheated rooms or garages, walls with cold water pipes, or cooling ducts directly behind them, or near doors to the outside; or in areas that receive poor air circulation, such as closets, room corners, behind furniture, drapes or behind opened doors.

(e) *Installation Procedures.* (1) Do not install the clock thermostat unless the pre-installation inspection and preparation has been carried out.

(2) Install the clock thermostat in strict accordance with the manufacturer's installation instructions and these installation practices except where local codes and regulations are more stringent.

(3) Install circuit conductors (on electrical units only) in a manner that will prevent their accidental grounding or shorting.

(4) Install the thermostat on a flat, firm, vertical surface to ensure that the functioning of the device is not impaired.

(5) Level the device to assure that the thermostat functions properly.

(6) When the unit requires electrical wiring and is classified as a Class 2 thermostat circuit, separate any conductors for that circuit by at least two inches from the conductors of any light or power circuit, except where that light or power circuit is permanently separated from the Class 2 thermostat circuit by a firmly fixed non-conductor or where it is in a protective cable or conduit.

(7) Do not place conductors of Class 2 circuits in any enclosure or compartment with conductors of light or power circuits unless the conductors of different circuits are separated by a partition, or the other conductors in the outlet boxes, junction boxes or similar fittings are there solely to supply power to thermostat circuit controls.

(8) Install conductors of Class 2 thermostat circuits in any hoistway in rigid conduit, intermediate metal conduit, or electrical metallic tubing.

(9) In any shaft or vertical run install only conductors for Class 2 circuits which have a fire resistant covering.

(10) Install only conductors which are of a size and have electrical insula-

tion which is suitable for the particular application.

(11) When the unit requires a transformer to supply power to a Class 2 thermostat circuit, install only a transformer which is within the power limit of Class 2 circuits either through its inherent current limiting impedance or by means of the supply limitation and an overcurrent protection device.

(12) Install only Class 2 transformers which are plainly marked by the manufacturer as power-supplies for Class 2 thermostat circuits.

(13) When the unit requires a new or replacement transformer to supply power to a Class 2 thermostat circuit, the conductors and equipment on the supply side shall be wired by a approved electrician according to standard electrical power circuit practice as outlined in the appropriate section of Chapter 3 of the National Electrical Code.

(f) *Post-Installation Inspection and Procedures.* (1) Ensure that the unit has been installed according to the manufacturer's instructions and this section except where local codes and regulations are more stringent.

(2) Ensure that the unit is operational for its specific applications.

(3) Provide any warranty cards and instructional material on the use of the device that accompanied the unit.

§ 456.912 Standard Practice for the Installation of Insulation on Gas-Fired, Oil-Fired, and Electric Resistance Water Heaters.

(a) *Scope.* (1) This practice covers the installation of insulation around gas-fired, oil-fired, and electric resistance water heaters.

(2) This practice applies only to the installation of mineral fiber blanket thermal insulation materials.

(3) This practice covers the installation process from pre-installation inspection through post-installation inspection. It does not cover the production of the insulation materials.

(4) This practice is not intended to replace the manufacturer's installation instructions unless they are inconsistent with this practice.

(5) This practice is not intended to supersede the authority of state and local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(6) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, methods necessary for the installation of thermal insulation materials and water heaters in general or, in the alternative, that the person supervising the installer have such knowledge.

(7) This practice covers aspects of installation relating to the effectiveness, durability, and safety of the insulation in service.

(8) This practice provides minimum requirements that will help to ensure the installation of water heater insulation in a safe and effective manner. It must be noted that actual conditions vary greatly and in some cases additional care and precaution may have to be taken to ensure effective and safe installation.

(b) *Significance.* (1) This practice recognizes that effectiveness, safety, and durability of water heater jacket insulation depend not only on the quality of the materials, but also on their proper and workmanlike installation.

(2) Improper installation of insulation may reduce its thermal effectiveness, cause fire hazards and other unsafe conditions.

NOTE 1. Specific hazards that can result from improper installation of water heater insulation include fire, water damage and the release of toxic gases.

(c) *Pre-Installation Inspection and Preparation.*—(1) *General.* Determine the fuel type (gas, electric, oil) of the water heater.

(2) *Electric Resistance Water Heater.* Determine the location of the pressure relief valve, thermostat control, and hi-limit switch (see Figure 1).

(3) *Gas-Fired Water Heater.* (i) Determine whether the gas-fired water heater is equipped with a flue damper. Do not insulate gas-fired water heaters so equipped.

(ii) Determine the location of the pressure relief valve and draft hood on top of the water heater (see Figure 2).

(iii) Determine the location of the burner air inlet, pilot light access plate, and drain valve (see Figure 2).

(4) *Oil-Fired Water Heater.* (i) Determine the location of the pressure relief valve, flue pipe, and barometric draft gauge (see Figure 3).

(B) Determine the location of the thermostat control, peep sight and drain valve (see Figure 3).

[6450-01-C]

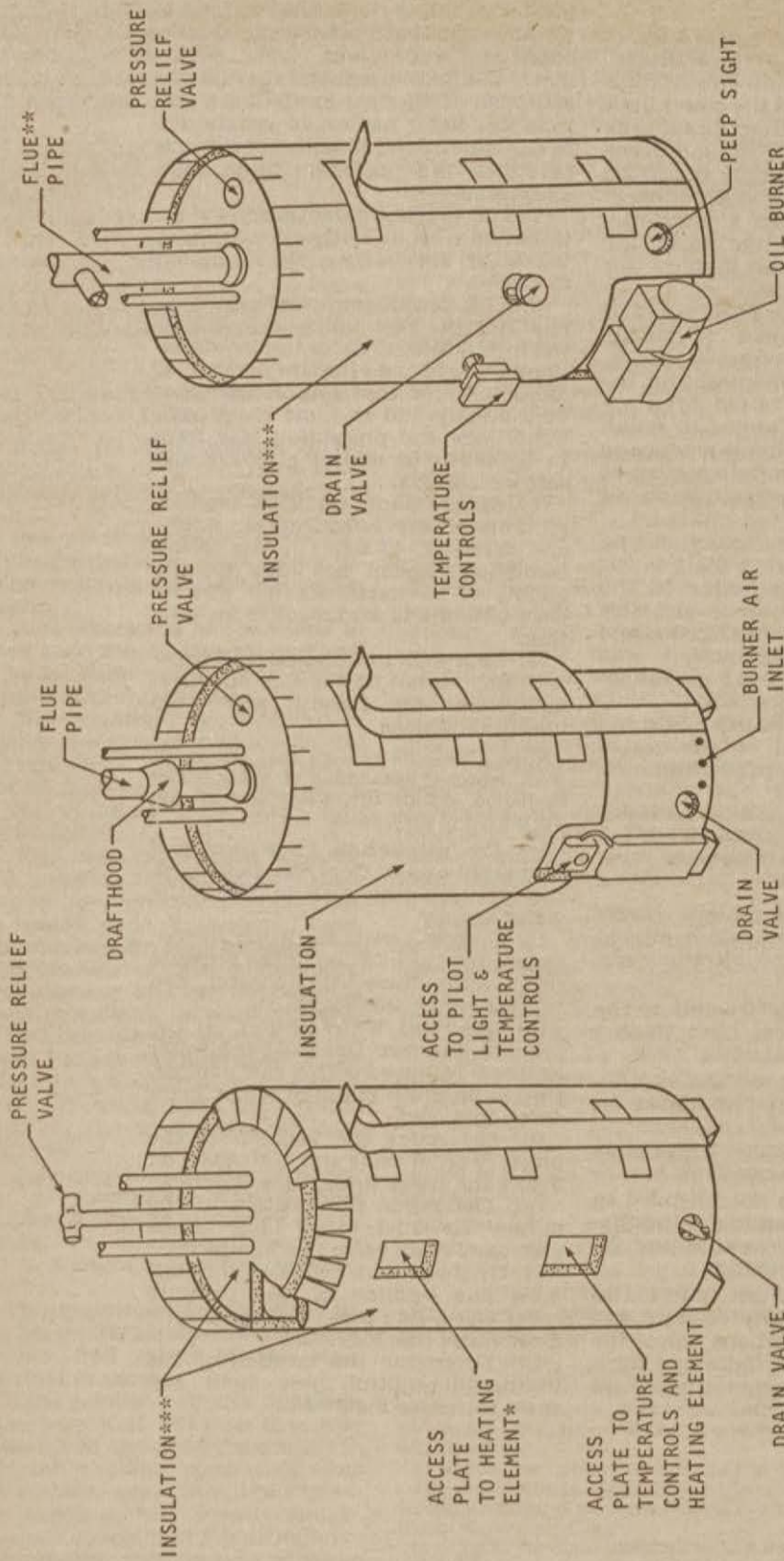


Figure 1. Electric Water Heater Figure 2. Gas-Fired Water Heater Figure 3. Oil-Fired Water Heater

- * Only found on water heaters with two heating elements.
- ** The pipe may be side-mounted.
- ***Top insulated on all electric water heaters and oil-fired water heaters with side-mounted flue pipes.

[6450-01-M]

(d) *Installation Procedures*—(1) *General*. (i) Do not install insulation unless the pre-installation inspection and preparation has been carried out.

(ii) Handle insulation in accordance with manufacturer's instructions and keep dry and free of extraneous materials.

(iii) Apply the insulation to the water heater with the facing to the outside.

(iv) Secure the sections of insulation to the water heater using a tape of the size and type recommended by the insulation manufacturer.

(2) *Electric Resistance Water Heater*. (i) Install insulation on the sides and top plate of the water heater.

(ii) Cut the insulation to leave holes for the pressure relief valve, thermostat control, hi-limit switch, plumbing pipes and other necessary access plates.

(3) *Gas-Fired Water Heater*. (i) Do not install insulation on the top plate of gas-fired water heaters.

(ii) Cut the insulation to leave holes for the burner air inlet, thermostat control, pilot light access plate, drain valve, plumbing pipes and other necessary access plates.

(4) *Oil-Fired Water Heaters*. Do not install insulation closer than four inches from a side-mounted flue pipe.

(ii) If the flue pipe is top-mounted do not install insulation on the top plate of the water heater.

(iii) Cut the insulation to leave holes for the pressure relief valve, thermostat control, flame peep sight, burner access plate, drain valve, plumbing pipes and other necessary access plates.

(e) *Post-Installation Inspection Procedures*. (1) Ensure that all water heater surfaces, except those indicated herein, have been covered with insulation.

(2) Ensure that no air inlets, access plates, drain valves, temperature controls and pressure relief valves are covered by insulation.

(3) Ensure that all insulation sections have been properly attached and sealed with tape.

§ 456.913 Standard Practice for the Installation of Replacement Oil Burners for Energy Conservation.

(a) *Scope*. (1) This practice provides minimum requirements for the installation of replacement oil burners for the purpose of significantly reducing the amount of fuel oil consumed by increasing combustion efficiency and reducing firing rate. It is intended for use on warm air, hot water, and steam systems, but does not cover firing rate reductions for steam heating systems. This is because steam boilers are considerably less flexible in accepting firing rate modifications than hot air or hot water furnaces because of the boilers' need to provide the rate of

steam generation required to obtain suitable steam distribution throughout the system.

(2) This practice covers the installation process from pre-installation inspection for inefficient operation through post-installation tune-up for best efficiency. Special considerations for maximizing system efficiency are emphasized.

(3) This practice is not intended to replace the burner manufacturer's installation instructions unless they are inconsistent with this practice. It is intended to supplement the manufacturer's instructions where the latter are less stringent than those prescribed herein and to supersede the manufacturer's instructions in matters of efficiency.

(4) This practice is intended for use by approved installers. It outlines the general procedure to be followed, but leaves the detailed step-by-step methodology to the approved installers. It is therefore not intended for use by the general public or by untrained persons, since such use may be unsafe or result in damaged equipment.

(5) This practice covers aspects of installation relating to the effectiveness, durability, and safety of replacement oil burners in service.

(6) This practice does not supersede the authority of local codes and regulations unless the requirements of such codes and regulations are less stringent than those prescribed herein.

(7) This practice requires that the person installing the insulation have a working knowledge of the applicable codes and regulations, tools, equipment, and methods necessary for the installation of replacement oil burners or, in the alternative, that the person supervising the installer have such working knowledge. It also requires an understanding of the fundamentals of residential construction that affect the installation of replacement oil burners.

(b) *Significance*. (1) This practice recognizes that substantial amounts of fuel oil can be conserved by replacing burners that are inefficient through design, wear, or extreme oversizing with respect to the building's heating

requirements with new, properly sized, high-efficiency burners.

(2) This practice recognizes that effectiveness, safety and durability of replacement oil burners depends not only on the quality of the materials but also on their proper and workmanlike installation.

(3) This practice Improper installation of replacement oil burners may reduce their effectiveness, and contribute to fire hazards and other unsafe conditions.

(c) *Evaluation of Existing Burner*.

(1) Seal air leaks around burner tube, clean-out doors, secondary air dampers and firing doors on converted coal burners.

(2) Adjust air gate to give a smoke reading of #1 or greater when measured in accordance with the procedure outlined in American National Standard ANSI/ASTM D2156-65 (1975) (after subparagraph (3) of this paragraph has been completed, restore burner to a smoke reading of #1 or less).

(3) Start the burner and allow it to run at least 15 minutes to reach a steady state operating condition. Measure the flue gas temperature and the percentage of CO₂ in the flue gas through a 1/4" diameter hole in the flue located between the barometric draft regulator and the furnace flue outlet.

(4) Using Figures 1 or 2 in Appendix D, determine the steady state efficiency of the furnace from the flue gas temperature and percent CO₂ concentration. As an alternative, steady state efficiency may be calculated using the procedures given in Appendix C.

(d) *Replacement Criteria*. (1) Replace the burner if the estimated savings resulting from installation of a more efficient burner will pay for the cost of the replacement burner. If the savings calculated in subparagraph (2) of this paragraph multiplied by the desired payback period in years exceed the total cost of burner replacement (labor plus parts), the burner should be replaced.

(2) Table 1 shows the annual dollar savings per \$100 of annual fuel costs that can be achieved by increasing furnace efficiency. Note that as fuel prices increase, the payback period will become shorter.

TABLE 1.—Annual Dollar Savings Per \$100 of Annual Fuel Cost as a Result of Increased Furnace Efficiency

From original efficiency of	To an increased efficiency of						
	74%	76%	78%	80%	82%	84%	86%
50%.....	\$32.40	\$34.20	\$35.90	\$37.50	\$37.50	\$40.50	\$41.90
52%.....	29.70	31.60	33.30	35.00	36.80	38.10	39.50
54%.....	27.00	28.90	30.60	32.50	34.10	35.70	37.20
56%.....	24.30	26.30	28.20	30.00	31.70	33.30	34.90
58%.....	21.60	23.70	25.60	27.50	29.30	31.00	32.60
60%.....	18.90	21.10	23.10	25.00	26.80	28.60	30.20
62%.....	16.20	18.40	20.50	22.50	24.40	26.20	27.90
64%.....	13.50	15.80	17.90	20.00	22.00	23.80	25.60
66%.....	10.80	13.20	15.40	17.50	19.50	21.40	23.30
68%.....	8.10	10.50	12.80	15.00	17.10	19.00	20.90
70%.....	5.40	7.90	10.30	12.50	14.80	16.70	18.60
72%.....	2.70	5.30	7.70	10.00	12.20	14.30	16.30
74%.....		2.60	5.10	7.50	9.80	11.90	14.00
76%.....			2.60	5.00	7.30	9.50	11.60

The original furnace efficiency is the value calculated in paragraph (c)(4) of this section. The efficiency of the furnace with a new burner conforming to the requirements of ANSI Z91.2 may be estimated by assuming a stack CO₂ concentration of 10 percent and a stack temperature equal to that measured in paragraph (c)(3) of this section. If the burner manufacturer specifies a CO₂ concentration greater than 10 percent for his burner when tested in accordance with ANSI Z91.2, this should be used instead of the minimum value of 10 percent which the ANSI standard requires.

As an example, if the original stack conditions were six percent CO₂ and 500° F. (72 percent efficiency)

(Instructions for calculating furnace efficiency are given in Appendix C) and the manufacturer of the replacement burner stated that 12 percent CO₂ was obtainable with his burner, the assumed new conditions with the replacement burner installed would be 12 percent CO₂ and 500° F. (81 percent efficiency). Using these two values an estimated annual saving of \$11.10 per \$100 of annual fuel cost can be read. If the annual fuel costs were \$500, the annual savings would be \$11.10 × 5 = \$55.50. If the desired payback period were seven years, the total savings justifying burner replacement would be \$55.50 × 7 = \$388.50. In this example the burner should be replaced if the total replacement (labor

plus parts) cost is less than \$388 and should not be replaced if the total replacement cost is more than \$388.

Use an additional average savings of \$5.80 per \$100 of annual fuel cost in the payback period calculation if the firing rate of the new burner is optimized as described in paragraph (e)(1) of this section and the resulting value is smaller than the original firing rate by 20 percent or more (see paragraph (e)(1) of this section).

(e) *Selection of Replacement Burner.*

(1) Determine design nozzle size. Using the local outdoor design temperature for the area and the measured average winter K-factor for the residence (degree days per gallon) determine the minimum nozzle size by the formula:

$$\text{minimum nozzle size} = \frac{(65 - T_D)}{(K\text{-factor})(24)} \times \frac{\text{Efficiency of Furnace Measured in (c)(4)}}{\text{Expected Efficiency of furnace with New Burner as calculated in (d)(2)}}$$

Where T_D is the local outdoor design temperature in °F and the K-factor is in degree days per gallon of oil.

If the outdoor design temperature is not known, refer to Chapter 33 of the ASHRAE Handbook of Fundamentals. Use the 97.5 percent values for the nearest weather station listed.

The winter K-factor is an average value derived over one or more complete heating seasons. The K-factor for a residence is defined as the number of degree days occurring in a time period divided by the total number of gallons of oil used during the same period to maintain a house at its normal thermostat setting. Determine from the occupant whether storm windows or a substantial amount of new insulation has been installed since the last heating season. If so, the calculation of the K-factor with the above formula may be too high.

If the heat requirement of the house has been significantly reduced by insulation or storm windows, it may also be possible to reduce the cut-off set point of the aquastat on hot water boilers by 10 to 20° F. to reduce standby heat losses. This setback may not be able to be done, however, if the boiler is used to heat domestic hot water.

Thermostat setback is to be encouraged as an additional energy conserva-

tion measure. If the owner plans to practice nighttime setback, in order to insure adequate temperature recovery, increase the size of the burner replacement nozzle by adding a value in gallons per hour equal to the heated house floor area in square feet, times the pickup capacity factor (PCF), divided by 140,000, where PCF is given by the following table:

Outdoor design temperature, °F	Pickup capacity factor, Btu/hour/sq. foot floor area
40	9.5
30	13.0
20	14.9
10	15.8
0	17.0
-10	17.7
-20	18.8

Select a nozzle that gives the spray pattern and angle recommended by the manufacturer of the replacement burner that is not larger than the original nozzle.

(2) Choose the replacement burner recommended by its manufacturer for use with the design nozzle size calculated in subparagraph (1) of this paragraph.

(3) Do not select a flame retention replacement burner for use on a hot water or steam boiler equipped with stainless steel tubes. Higher tempera-

ture levels produced by high performance flame retention burners may cause the combustion chamber to burn out.

(f) *Installation Replacement Burner.*

(1) Install fixed firing rate replacement burners with a nozzle of the size calculated in paragraph (e)(1) of this section.

(2) Replace the burner in accordance with the manufacturer's instructions following normal, good installation practices.

(3) It is anticipated that most burner replacements will involve replacing a conventional burner with a high speed, flame retention head burner. If this is done, a new furnace liner designed for this application may have to be installed since flame retention burners operate at higher temperatures (2300° F vs. 1800° F) than conventional burners and could cause damage to a firebox refractory designed for use with conventional burners.

(4) Ensure that the completed installation is in conformance with all local and state building and fire safety codes. Where local codes do not exist, verify conformance with American National Standard Installation of Oil Burning Equipment, Z95.1-1974 (NFPA No. 31-1974).

(5) Test-operate the installed burner and measure its efficiency following the guidelines of U.S. Environmental

Protection Agency Report No. EPA 600/2-75-069a (October 1975), "Guidelines for Residential Oil Burner Adjustments." If the replacement burner results in an appreciable reduction in stack temperature, the stack switch heat controls (if the unit is so equipped) for ignition cutoff may need to be readjusted.

(6) The temperature of the combustion gases entering the draft regulator must be at least 370° F for chimneys enclosed within the insulated structure to prevent condensate and subsequent corrosion. The temperature of the combustion gases entering the draft regulator if 2 or 3 sides of the chimney are exposed to an outdoor ambient design temperature of 0° F or less to prevent condensation and freezing within the chimney. If the temperature of the combustion gases entering the draft regulator is below the specified minimum value, fit a larger nozzle to increase that temperature.

(g) *Data to be Recorded.* (1) Record the following information and leave a copy with the owner and on a tag attached to the equipment.

- (i) Date of replacement
 - (ii) Identity of installing mechanic and company
 - (iii) The original burner make, model, model number, and nozzle size
 - (iv) The replacement burner make, model number, and nozzle size
 - (v) The number and size of any additional nozzles tried in the replacement burner
 - (vi) Other modifications to the unit
 - (vii) The initial and final CO₂ net stack temperature, efficiency, and smoke readings.
- (2) This information will be helpful for future servicing of the unit and in troubleshooting any problems which arise immediately after burner replacement and/or firing rate reduction.

§ 456.914 Standard Practice for the Installation of Urea-Formaldehyde Foam Insulation. [Reserved.]

§ 456.915 Standard Practice for the Installation of Pipe Insulation. [Reserved.]

§ 456.916 Standard Practice for the Installation of Vent Dampers and Electronic Ignition Devices. [Reserved.]

APPENDIX A TO SUBPART I, PART 456

ASTM AND ANSI STANDARDS

1. "ASTM" means the American Society for Testing and Materials. ASTM is a scientific and technical organization formed for "the development of standards on characteristics and performance of materials, products, systems, and services, * * *." ASTM standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

2. ASTM Designation C168-67 means "Standard Definitions of Terms Relating to Thermal Insulating Materials."

3. ASTM Designation C755-73 means "Standard Recommended Practice for Selection of Vapor Barriers for Thermal Insulation."

4. ASTM Designation E84-77 means "Standard Test Method for Surface Burning Characteristics of Building Materials."

5. ASTM Designation E119-76 means "Standard Methods of Fire Tests of Building Construction and Materials."

6. "ANSI" means American National Standards Institute.

7. ANSI Z96.2-1974 (UL 296-Sept. 1974) means "American National Standard Safety Standard for Oil Burners."

8. ANSI Z91.2-1976 means "American National Standard Performance Requirements for Automatic Pressure Atomizing Oil Burners of the Mechanical Draft Type."

9. ANSI/AS9M D2156-65 (1975) means "American National Standard Method of Tests for Smoke Density in the Flue Gases from Distillate Fuels."

APPENDIX B TO SUBPART I, PART 456

NATIONAL ELECTRIC CODE TABLES 310-16 THROUGH 310-19*

*Reproduced by permission from NFPA-70, National Electric Code, copyright © 1977, National Fire Protection Association, Boston, MA.

Table 310-16. Allowable Ampacities of Insulated Conductors
Rated 0-2000 Volts, 60° to 90°CNot More Than Three Conductors in Raceway or Cable or Earth
(Directly Buried), Based on Ambient Temperature of 30°C (86°F)

Size	Temperature Rating of Conductor. See Table 310-13										Size
	60°C (140°F)	75°C (167°F)	85°C (185°F)	90°C (194°F)	60°C (140°F)	75°C (167°F)	85°C (185°F)	90°C (194°F)	60°C (140°F)	75°C (167°F)	
AWG	TYPES RW, TW, UF	TYPES FEWP, RH, RHW, THW, THWN, USE, ZW	TYPES V, MI	TYPES TA, TBS, SA, AVB, SIS, TFEF, THHN, TTHHN, XHHW*	TYPES RW, TW, UF	TYPES RH, RHW, THW, THWN, XHHW, USE	TYPES V, MI	TYPES TA, TBS, SA, AVB, SIS, TFEF, THHN, TTHHN, XHHW*	TYPES RW, TW, UF	TYPES RH, RHW, THW, THWN, XHHW, USE	AWG
MCM											MCM
18	...	...	22	21	...	...	...	...	...	...	...
16	...	...	22	21	...	...	...	...	...	...	...
14	...	...	25	25	...	...	...	...	...	...	...
12	...	...	30	30	...	...	...	...	...	...	...
10	...	...	35	35	...	...	...	...	...	...	...
8	...	...	40	40	...	...	...	...	...	...	...
6	...	...	45	45	...	...	...	...	...	...	...
4	...	...	55	55	...	...	...	...	...	...	...
3	...	...	65	65	...	...	...	...	...	...	...
2	...	...	75	75	...	...	...	...	...	...	...
1	...	...	90	90	...	...	...	...	...	...	...
0	...	...	105	105	...	...	...	...	...	...	...
00	...	...	125	125	...	...	...	...	...	...	...
000	...	...	150	150	...	...	...	...	...	...	...
0000	...	...	175	175	...	...	...	...	...	...	...
250	...	...	200	200	...	...	...	...	...	...	...
300	...	...	225	225	...	...	...	...	...	...	...
350	...	...	250	250	...	...	...	...	...	...	...
400	...	...	275	275	...	...	...	...	...	...	...
450	...	...	300	300	...	...	...	...	...	...	...
500	...	...	325	325	...	...	...	...	...	...	...
600	...	...	350	350	...	...	...	...	...	...	...
700	...	...	375	375	...	...	...	...	...	...	...
750	...	...	400	400	...	...	...	...	...	...	...
800	...	...	425	425	...	...	...	...	...	...	...
850	...	...	450	450	...	...	...	...	...	...	...
900	...	...	475	475	...	...	...	...	...	...	...
1000	...	...	500	500	...	...	...	...	...	...	...
1250	...	...	550	550	...	...	...	...	...	...	...
1500	...	...	600	600	...	...	...	...	...	...	...
1750	...	...	650	650	...	...	...	...	...	...	...
2000	...	...	700	700	...	...	...	...	...	...	...

CORRECTION FACTORS

Ambient Temp. °C	For ambient temperatures over 30°C, multiply the ampacities shown above by the appropriate correction factor to determine the maximum allowable load current.										Ambient Temp. °F
	31-40	41-50	51-60	61-70	71-80	81-90	91-100	101-110	111-120	121-130	
31-40	.82	.88	.90	.91	.91	.88	.88	.88	.88	.88	86-104
41-50	.58	.75	.80	.82	.82	.75	.75	.75	.75	.75	105-122
51-60	...	.58	.67	.71	.71	.58	.58	.58	.58	.58	123-141
61-70	...	...	.35	.52	.52	.35	.35	.35	.35	.35	142-158
71-80	...	...	...	.30	.41	...	...	...	...	...	159-176

†The load current rating and the overcurrent protection for these conductors shall not exceed 15 amperes for 14 AWG, 20 amperes for 12 AWG, and 30 amperes for 10 AWG copper; or 15 amperes for 12 AWG and 25 amperes for 10 AWG aluminum and copper-clad aluminum.

* For dry locations only. See 75°C column for wet locations.

Table 310-17. Allowable Ampacities of Insulated Conductors
Rated 0-2000 Volts, 60° to 90°C

Single conductors in free air, based on ambient temperature of 30°C (86°F).

Size	Temperature Rating of Conductor. See Table 310-13										Size
	60°C (140°F)	75°C (167°F)	85°C (185°F)	90°C (194°F)	60°C (140°F)	75°C (167°F)	85°C (185°F)	90°C (194°F)	60°C (140°F)	75°C (167°F)	
AWG	TYPES RW, TW, UF	TYPES FEWP, RH, RHW, THW, THWN, USE, ZW	TYPES V, MI	TYPES TA, TBS, SA, AVB, SIS, TFEF, THHN, TTHHN, XHHW*	TYPES RW, TW, UF	TYPES RH, RHW, THW, THWN, XHHW, USE	TYPES V, MI	TYPES TA, TBS, SA, AVB, SIS, TFEF, THHN, TTHHN, XHHW*	TYPES RW, TW, UF	TYPES RH, RHW, THW, THWN, XHHW, USE	AWG
MCM											MCM
18	...	...	22	21	...	...	...	...	...	...	...
16	...	...	22	21	...	...	...	...	...	...	...
14	...	...	25	25	...	...	...	...	...	...	...
12	...	...	30	30	...	...	...	...	...	...	...
10	...	...	35	35	...	...	...	...	...	...	...
8	...	...	40	40	...	...	...	...	...	...	...
6	...	...	45	45	...	...	...	...	...	...	...
4	...	...	55	55	...	...	...	...	...	...	...
3	...	...	65	65	...	...	...	...	...	...	...
2	...	...	75	75	...	...	...	...	...	...	...
1	...	...	90	90	...	...	...	...	...	...	...
0	...	...	105	105	...	...	...	...	...	...	...
00	...	...	125	125	...	...	...	...	...	...	...
000	...	...	150	150	...	...	...	...	...	...	...
0000	...	...	175	175	...	...	...	...	...	...	...
250	...	...	200	200	...	...	...	...	...	...	...
300	...	...	225	225	...	...	...	...	...	...	...
350	...	...	250	250	...	...	...	...	...	...	...
400	...	...	275	275	...	...	...	...	...	...	...
450	...	...	300	300	...	...	...	...	...	...	...
500	...	...	325	325	...	...	...	...	...	...	...
600	...	...	350	350	...	...	...	...	...	...	...
700	...	...	375	375	...	...	...	...	...	...	...
750	...	...	400	400	...	...	...	...	...	...	...
800	...	...	425	425	...	...	...	...	...	...	...
850	...	...	450	450	...	...	...	...	...	...	...
900	...	...	475	475	...	...	...	...	...	...	...
1000	...	...	500	500	...	...	...	...	...	...	...
1250	...	...	550	550	...	...	...	...	...	...	...
1500	...	...	600	600	...	...	...	...	...	...	...
1750	...	...	650	650	...	...	...	...	...	...	...
2000	...	...	700	700	...	...	...	...	...	...	...

CORRECTION FACTORS

Ambient Temp. °C	For ambient temperatures over 30°C, multiply the ampacities shown above by the appropriate correction factor to determine the maximum allowable load current.										Ambient Temp. °F
	31-40	41-50	51-60	61-70	71-80	81-90	91-100	101-110	111-120	121-130	
31-40	.82	.88	.90	.91	.91	.88	.88	.88	.88	.88	86-104
41-50	.58	.75	.80	.82	.82	.75	.75	.75	.75	.75	105-122
51-60	...	.58	.67	.71	.71	.58	.58	.58	.58	.58	123-141
61-70	...	...	.35	.52	.52	.35	.35	.35	.35	.35	142-158
71-80	...	...	...	.30	.41	...	...	...	...	...	159-176

†The load current rating and the overcurrent protection for these conductors shall not exceed 20 amperes for 14 AWG, 25 amperes for 12 AWG, and 40 amperes for 10 AWG copper; or 20 amperes for 12 AWG and 30 amperes for 10 AWG aluminum and copper-clad aluminum.

* For dry locations only. See 75°C column for wet locations.

Table 310-18. Allowable Ampacities for Insulated Conductors Rated 110 to 250°C
Not More Than Three Conductors in Raceway or Cable
Based on Ambient Temperature of 30°C (86°F).

Size	Temperature Rating of Conductor. See Table 310-13										Size
	110°C (230°F)	125°C (257°F)	150°C (302°F)	200°C (392°F)	250°C (482°F)	110°C (230°F)	125°C (257°F)	150°C (302°F)	200°C (392°F)		
	Types AVL AVA, AIA	Types AVL AVA, AIA	Types Z AIA	Types A, AA, FEPA, FEPA, FEPA	NICKEL OR NICKEL- COATED COPPER	Types AVL AVA, AIA	Types AVL AVA, AIA	Types A, AA, FEPA, FEPA	Types A, AA, FEPA, FEPA		
AWG MCM	COPPER										AWG MCM
14	30	30	30	30	40	30	30	30	30	12	
12	35	40	40	40	55	35	40	40	45	10	
10	45	50	50	55	75	45	50	50	55	8	
8	60	65	65	70	95	60	65	65	75	6	
6	80	85	90	95	120	80	85	85	95	4	
4	105	115	115	120	145	105	110	110	115	3	
3	120	130	135	145	170	120	125	125	130	2	
2	135	145	150	165	195	135	140	140	150	1	
1	160	170	180	190	220	160	165	165	180	0	
0	190	200	210	225	250	190	195	195	200	00	
00	215	230	240	250	280	215	220	220	225	000	
000	245	265	275	285	315	245	250	250	255	0000	
0000	275	310	325	340	370	275	280	280	285	00000	
250	315	335	350	360	400	315	320	320	325	250	
300	345	365	380	390	430	345	350	350	355	300	
350	390	420	440	450	490	390	400	400	405	350	
400	420	450	470	480	520	420	430	430	435	400	
500	470	500	520	530	570	470	480	480	485	500	
600	525	545	560	570	610	525	535	535	540	600	
700	560	600	620	630	670	560	570	570	575	700	
750	580	620	640	650	690	580	590	590	595	750	
800	600	640	660	670	710	600	610	610	615	800	
1000	680	730	750	760	800	680	690	690	695	1000	
1500	785	840	860	870	910	785	795	795	800	1500	
2000	840	900	920	930	970	840	850	850	855	2000	

CORRECTION FACTORS											
Ambient Temp. °C	For ambient temperatures over 30°C, multiply the ampacities shown above by the appropriate correction factor to determine the maximum allowable load current.										Ambient Temp. °F
	.94	.95	.96	...	...	...	.94	.95	...	...	
31-40	.94	.95	.96	...	...	...	...	.95	...	...	87-104
41-45	.90	.92	.94	...	...	...	...	.90	.92	...	105-113
46-50	.87	.89	.91	...	...	...	...	.87	.89	...	114-122
51-55	.83	.86	.89	...	...	...	...	.83	.86	...	123-131
56-60	.79	.83	.87	.91	.95	.97	.98	.79	.83	.91	132-141
61-70	.71	.76	.82	.87	.91	.93	.95	.71	.76	.87	142-158
71-75	.66	.72	.79	.86	.89	.91	.93	.66	.72	.86	159-167
76-80	.61	.68	.76	.84	.87	.89	.91	.61	.69	.84	168-176
81-90	.50	.61	.71	.80	.83	.85	.87	.50	.61	.80	177-194
91-100	.51	.65	.77	.80	.83	.85	.87	.51	.67	.79	195-212
101-120	...	.50	.69	.72	.75	.77	.79	...	.69	.77	213-248
121-140	...	...	.59	.59	.59	.59	.59	...	...	.59	249-284
141-160	...	...	.54	.54	.54	.54	.54	...	...	...	285-320
161-180	...	...	...	.50	.50	.50	.50	...	...	...	321-356
181-200	...	...	...	...	.43	.43	.43	...	...	...	357-392
201-225	...	...	...	...	...	.30	.30	...	...	...	393-437

Table 310-19. Allowable Ampacities for Insulated Conductors Rated 110 to 250°C, and for Bare and Covered Conductors
Single Conductors in Free Air,
Based on Ambient Temperature of 30°C (86°F).

Size		Temperature Rating of Conductor. See Table 310-13.										Size																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
AWG MCM	110°C (230°F) Types AVA, AVL	125°C (257°F) Types AVA, AIA	150°C (302°F) Type Z	200°C (392°F) Types A, AA, FEPA, FEPA, PFA	250°C (482°F) Types PFAH, TFE	110°C (230°F) Types AVA, AVL	125°C (257°F) Types A, AA, AIA	200°C (392°F) Types A, AA, AIA	250°C (482°F) Types PFAH, TFE	200°C (392°F) Types A, AA, AIA	250°C (482°F) Types PFAH, TFE	Bare con- duc- tors																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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MONDAY, MARCH 19, 1979

[6450-01-M]

NOTES TO TABLES 310-16 THROUGH 310-19

1. *Explanation of Tables.* For explanation of Type Letters, and for recognized size of conductors for the various conductor insulations, see Sections 310-12 and 310-13. For insulation requirements, see Sections 310-1 through 310-9, and the various articles of this Code. For flexible cords see Table 400-4 and 400-5.

2. *Application of Tables.* For open wiring on insulators and for concealed knob-and-tube wiring, the allowable ampacities of Tables 310-17 and 310-18 shall be used, unless otherwise provided in this Code.

3. *Three-Wire, Single-Phase Residential Service.* In a residential occupancy conductors, as listed below, shall be permitted to utilize as three-wire, single-phase, service-entrance conductors and the three-wire, single-phase feeder that carries the total current supplied by that service.

CONDUCTOR TYPES AND SIZES RH-RHH-RHW-THW-THWN-THHN-XHHW

Copper	Aluminum and Copper-clad AL	Service rating amps
AWG	AWG	
4	2	100
3	1	110
2	1/0	125
1	2/0	150
1/0	3/0	175
2/0	4/0	200

4. *Type MC Cable.* The ampacities of Type MC cables are determined by the temperature limitation of the insulated conductors incorporated within the cable. Hence the ampacities of Type MC cable may be determined from the columns in Tables 310-16 and 310-18 applicable to the type of insulated

conductors employed within the cable.

5. *Bare Conductors.* Where bare conductors are used with insulated conductors, their allowable ampacities shall be limited to that permitted for the insulated conductors of the same size.

6. *Mineral-Insulated, Metal-Sheathed Cable.* The temperature limitation on which the ampacities of mineral-insulated, metal-sheathed cable are based is determined by the insulating materials used in the end seal. Termination fittings incorporating unimpregnated, organic, insulating materials are limited to 85° C operation.

7. *Type MTW Machine Tool Wire.* The ampacities of Type MTW wire are specified in Table 200-B of the Electrical Standard for Metalworking Machine Tools 1977 (NFPA Publication No. 79).

8. *More Than 3 Conductors in a Raceway or Cable.* Where the number of conductors in a raceway or cable exceed 3, the maximum allowable load current of each conductor shall be reduced as shown in the following table:

Number of conductors	Percent ¹
4 thru 6.....	80
7 thru 24.....	70
25 thru 42.....	60
43 and above.....	50

¹Values in table 310-16 and 310-18.

Where single conductors or multi-conductor cables are stacked or bundled without maintaining spacing are not installed in raceways, the maximum allowable load current of each conductor shall be reduced as shown in the above table.

Exception No. 1: When conductors of different systems, as provided in Section 300-3, are installed in a common raceway the derating factors shown above shall apply to the number of

power and lighting (Articles 210, 215, 220, and 230) conductors only.

Exception No. 2: The derating factors of Sections 210-22(c), 220-2(a) and 220-10(b) shall not apply when the above derating factors are also required.

Exception No. 3: For conductors installed in cable trays, the provisions of Sections 318-10 shall apply.

9. *Overcurrent Protection.* Where the standard ratings and settings of overcurrent devices do not correspond with the ratings and settings allowed for conductors, the next higher standard rating and setting shall be permitted.

Exception: As limited in Section 240-3.

10. *Neutral Conductor.* (a) A neutral conductor which carries only the unbalanced current from other conductors, as in the case of normally balanced circuits of 3 or more conductors, shall not be counted in determining ampacities as provided for in Note 8.

(b) In a 3-wire circuit consisting of 2-phase wires and the neutral of a 4-wire, 3-phase wye-connected system, a common conductor carries approximately the same current as the other conductors and shall be counted in determining ampacities as provided in Note 8.

(c) On a 4-wire, 3-phase wye circuit where the major portion of the load consists of electric-discharge lighting there are harmonic currents present in the neutral conductor and the neutral shall be considered to be a current-carrying conductor.

11. *Grounding Conductor.* A grounding conductor shall not be counted in determining ampacities as provided for in Note 8.

12. *Voltage Drop.* The allowable ampacities in Tables 310-16 through 310-19 are based on temperature alone and do not take voltage drop into consideration.

[6450-01-C]

APPENDIX C TO SUBPART I, PART 456

STEADY STATE EFFICIENCY

The steady state efficiency of the furnace may be determined directly from Table 1 for furnaces using No. 1 fuel oil or from Table 2 for furnaces using No. 2 fuel oil.

Alternatively the following equations may be used to calculate the furnace efficiency:

$$N_{SS} = 100 - L_{L,A} - L_{S,SS,A}$$

$$R_{T,F} = A + \frac{B}{X_{CO_2,S}}$$

$$L_{S,SS,A} = \frac{100}{HHV_A} \left[(1 + A/F) (CF(i) + \sum_{i=1} (A/F) (R_{T,F} - 1) (CA(i))) \times [(T_{F,SS} + 460)^i - (T_{RA} + 460)^i] \right]$$

Where:

N_{SS} = Steady state, full load efficiency %

$L_{L,A}$ = Average latent loss, % = 6.55 for No. 1 oil
6.50 for No. 2 oil

$L_{S,SS,A}$ = Average sensible heat loss, %

$R_{T,F}$ = Ratio of combustion air to stoichiometric air

$X_{CO_2,F}$ = Concentration by volume of CO_2 present in dry flue gas, %

PROPOSED RULES

$T_{F,SS}$ = Flue gas temperature at steady-state, °F

T_{RA} = Ambient temperature in furnace room, °F

Additional required constants are as follows:

	<u>For No. 1 - Oil</u>	<u>For No. 2 - Oil</u>
HHV _A	19,800	19,500
A/F	14.56	14.49
A	0.0679	0.06668

	<u>For No. 1 - Oil</u>	<u>For No. 2 - Oil</u>
B	14.22	14.22
CF (1)	2.4416834×10^{-1}	2.4361163×10^{-1}
CF (2)	3.3711449×10^{-6}	3.6702686×10^{-6}
CF (3)	8.8906305×10^{-9}	8.7098897×10^{-9}
CF (4)	$-1.3619019 \times 10^{-12}$	$-1.3094378 \times 10^{-12}$
CF (5)	$-1.4367410 \times 10^{-16}$	$-1.5029209 \times 10^{-16}$

For Air
(continued)

CA (1)	2.5462121×10^{-1}
CA (2)	$-3.0260126 \times 10^{-5}$
CA (3)	2.7608571×10^{-8}
CA (4)	$-7.4253321 \times 10^{-12}$
CA (5)	$6.4307377 \times 10^{-16}$

This calculation procedure is explained more fully in:

NBSIR 78-1543, "Recommended Testing and Calculation Procedures for Determining the Seasonal Performance of Residential Control Furnaces and Boilers."

Department of Energy Final Energy Conservation Test Procedures as printed in the Federal Register, Part II, for Wednesday, May 10, 1978.

APPENDIX D TO SUBPART I, PART 456

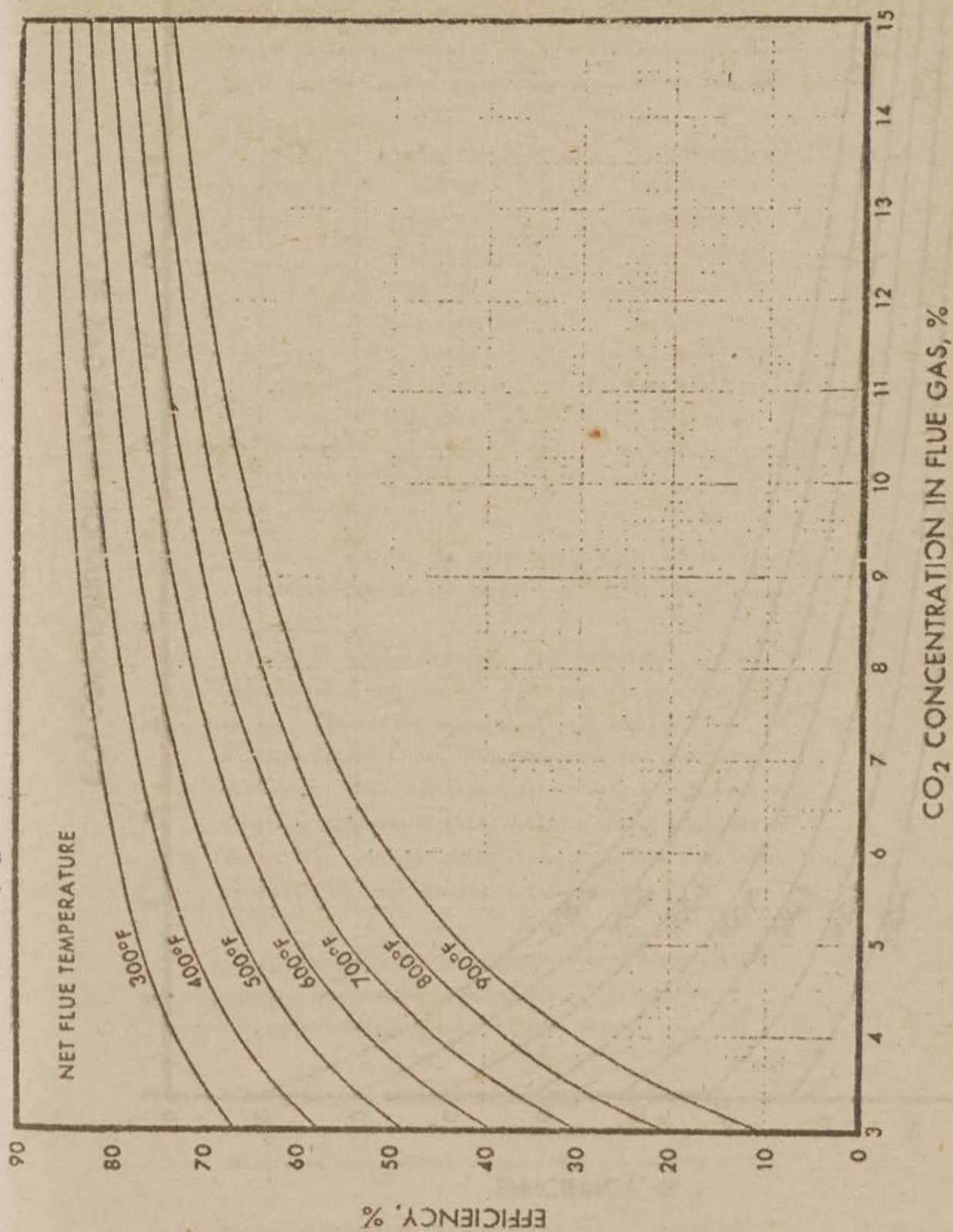


Figure 1. Effect of net flue temperature and percent CO₂ on efficiency for furnaces operating on No. 1 heating oil.

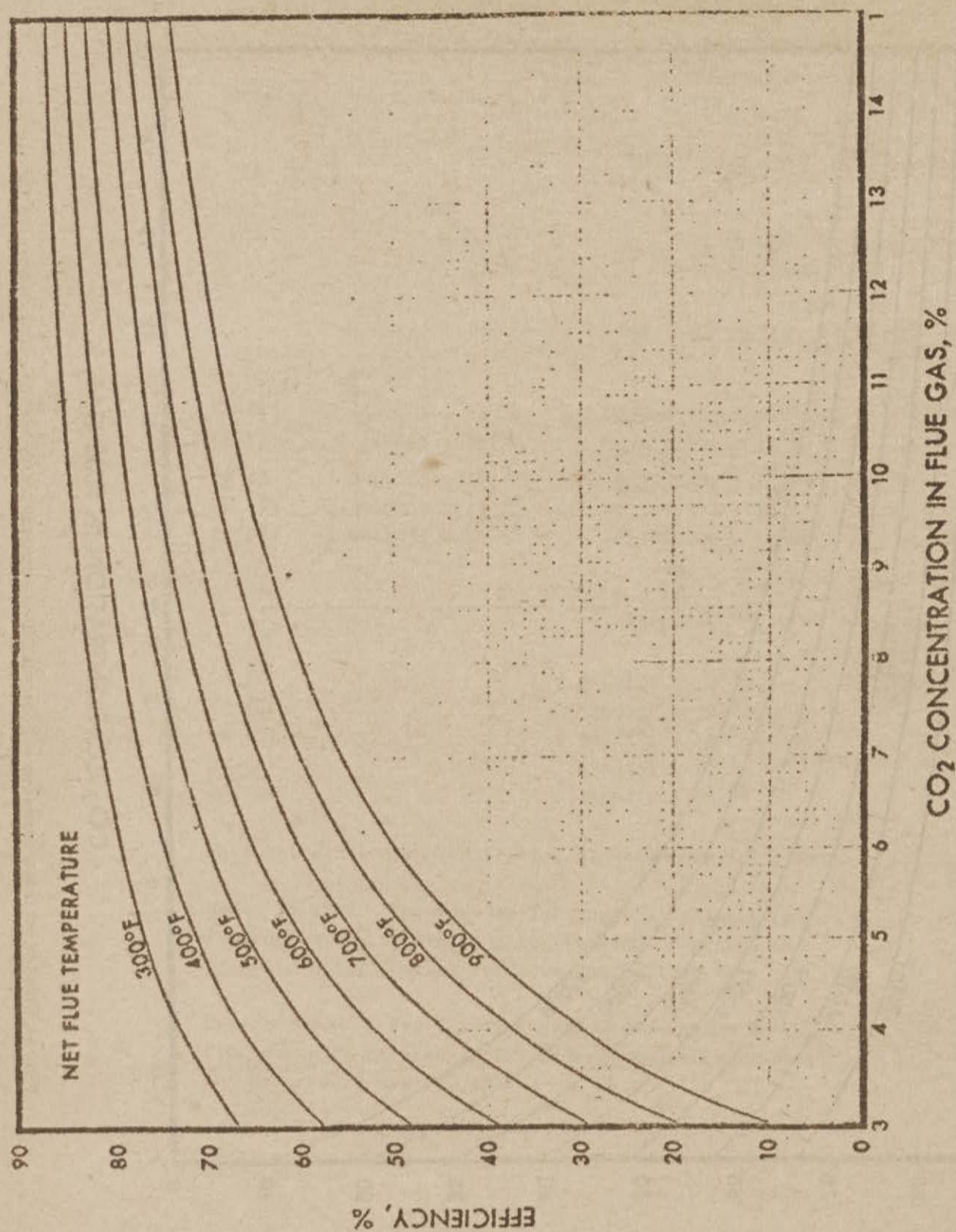


Figure 2. Effect of net flue temperature and percent CO₂ on efficiency for furnaces operating on No. 2 heating oil.

SUGGESTED MEASURES (CONSERVATION) APPENDIX I(A) TO PART 456(a) Climate Zones for Suggested Energy Conservation Measures.

In the tables of suggested energy conservation measures shown in "(c)" below, the climate zones are as follows:

	<u>Heating Degree Days</u>	<u>Cooling Degree Days</u>
Climate Zone 1	0-2000	Less Than 750
2	2000-4000	Less Than 750
3	4000-5500	Less Than 750
4	5500-7000	Less Than 750
5	More than 7000	Less Than 750
6	0-2000	More Than 2000
7	2000-4000	More Than 2000
8	2000-4000	750-2000
9	4000-5500	750-2000
10	5500-7000	750-2000

Figures (1) and (2) are respectively maps of heating degree days and cooling degree days.

- (b) (1) Load Management Devices. Load Management devices are suggested measures for all categories of buildings if, and only if, the electric utility serving such building offers a load management rate for residential customers. "Load management rate" means a rate charged to eligible customers which reflects the cost savings to the utility from the installation of Devices associated with Electric Load Management Techniques.

(2) Energy Usage Display Meters. Energy Usage Display Meters are suggested measures for all categories of buildings in all State and climate zones.

(3) Replacement Furnaces or Boilers. Replacement furnaces or boilers are suggested measures for all categories of buildings in all State and climate zones.

- (c) Tables of Conservation Measures by State. All other suggested energy conservation measures are displayed in the following tables organized by State.

FIGURE 1.

NORMAL SEASONAL HEATING DEGREE DAYS (BASE 65°F) 1941-1970



FIGURE 2.
NORMAL SEASONAL COOLING DEGREE DAYS (BASE 65°F) 1941-1970



PROPOSED RULES

STATE: ALABAMA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-14	x	x			x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x			x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x	x		x	x
7	GAS HEAT	x		x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: ALASKA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x		R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: ARIZONA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
6	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT		x	x		R-19	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT					R-30	x		R-19	x	x	x		x	x
7	GAS HEAT	x		x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x

STATE: ARIZONA (continued)

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-33	x	R-19	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: ARKANSAS

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
7	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-19	x		R-14	x	x			x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: CALIFORNIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
1	GAS HEAT			x	x	R-11			R-5	x	x				x
	OIL HEAT		x	x		R-11			R-5	x	x				x
	ELECTRICAL HEAT					R-19			R-5	x	x				x
2	GAS HEAT			x	x	R-19	x		R-10	x	x				x
	OIL HEAT	x	x	x		R-19	x	R-11	R-10	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
3	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x

STATE: CALIFORNIA (continued)

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT		x	x		R-19	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT					R-30	x		R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: COLORADO

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

PROPOSED RULES

STATE: CONNECTICUT

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
4	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: DELAWARE

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-19	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: DISTRICT OF COLUMBIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: FLORIDA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT					R-30	x		R-19	x	x	x		x	x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: GEORGIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x			x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x	x		x	x
7	GAS HEAT	x		x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: HAWAII

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-19	x	x			x	
	OIL HEAT		x	x		R-19	x		R-19	x	x			x	
	ELECTRICAL HEAT					R-19	x		R-19	x	x			x	
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: IDAHO

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: ILLINOIS

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: INDIANA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK, THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: IOWA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
10	GAS HEAT	x		x	x	R-38	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: KANSAS

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: KENTUCKY

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

PROPOSED RULES

STATE: LOUISIANA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19			R-14	x	x			x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x			x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x			x	x
7	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MAINE

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x	x		x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MARYLAND

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MASSACHUSETTS

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x	x		x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MICHIGAN

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MINNESOTA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MISSISSIPPI

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-14	x	x			x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x			x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x			x	x
7	GAS HEAT	x		x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x		x	x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MISSOURI

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
8	GAS HEAT			x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT		x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: MONTANA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NEBRASKA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NEVADA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
7	GAS HEAT			x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x

STATE: NEW HAMPSHIRE

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NEW JERSEY

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NEW MEXICO

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
7	GAS HEAT			x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x

STATE: NEW YORK

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-33	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NORTH CAROLINA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
7	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x			x
9	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: NORTH DAKOTA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: OHIO

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x	x		x
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: OKLAHOMA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
7	GAS HEAT			x	x	R-19	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
9	GAS HEAT			x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: OREGON

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: PENNSYLVANIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x

STATE: RHODE ISLAND

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: SOUTH CAROLINA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x	x		x	x
7	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: SOUTH DAKOTA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: TENNESSEE

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x		R-14	x	x	x			x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: TEXAS

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
6	GAS HEAT			x	x	R-19	x		R-14	x	x			x	x
	OIL HEAT		x	x		R-19	x		R-14	x	x			x	x
	ELECTRICAL HEAT					R-19	x		R-14	x	x	x		x	x
7	GAS HEAT			x	x	R-30	x		R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
8	GAS HEAT			x	x	R-19	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: UTAH

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x		R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: VERMONT

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x	x		x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: VIRGINIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-19	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
8	GAS HEAT	x		x	x	R-30	x		R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x		R-14	x	x	x		x	x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-19	x	x	x		x	x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x		x	x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: WASHINGTON

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-19	x	R-11	R-14	x	x	x			x
4	GAS HEAT	x		x	x	R-30	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-11	R-14	x	x	x			x
5	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-30	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: WEST VIRGINIA

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
3	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-11	R-14	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
9	GAS HEAT	x		x	x	R-30	x	R-11	R-14	x	x	x		x	x
	OIL HEAT	x	x	x		R-30	x	R-11	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R-19	R-19	x	x	x			x
10	GAS HEAT	x		x	x	R-30	x	R-11	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: WISCONSIN

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
4	GAS HEAT	x		x	x	R-38	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-30	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x			x
5	GAS HEAT	x		x	x	R-49	x	R-19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R-19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-49	x	R-19	R-19	x	x	x	x		x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

STATE: WYOMING

CLIMATE ZONE	BUILDING CATEGORY	CAULKING AND WEATHERSTRIPPING	REPLACEMENT OIL BURNER	VENT DAMPER	ELEC. OR MECH. IGNITION	CEILING INSULATION	WALL INSULATION	FLOOR INSULATION	DUCT INSULATION	PIPE INSULATION	WATER HEATER INSULATION	STORM OR THERMAL WINDOWS	STORM OR THERMAL DOORS	REFL. OR ABS. WINDOW MATERIAL	CLOCK THERMOSTAT
5	GAS HEAT	x		x	x	R-30	x	R19	R-19	x	x	x			x
	OIL HEAT	x	x	x		R-38	x	R19	R-19	x	x	x			x
	ELECTRICAL HEAT	x				R-38	x	R19	R-19	x	x	x			x
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														
	GAS HEAT														
	OIL HEAT														
	ELECTRICAL HEAT														

SUGGESTED MEASURES (RENEWABLE RESOURCES) APPENDIX I(B) PART 456

The following tables show the renewable resource measures which are suggested measures.

(a) The symbols for each measure are:

- D: Solar Domestic Hot Water Systems
- D: Active Solar Space Heating Systems
- D/S: Combined Active Solar Space Heating
and Solar Domestic Hot Water Systems
- P: Passive Solar Space Heating and Cooling
Systems
- W: Wind Energy Systems
- H: Replacement Solar Swimming Pool Heaters.

(b) (1) There are three buildings types which apply to Active Solar Space Heating Systems (S) and Combined Systems (D/S) (See § 456.306(b)):

Type 1 includes all detached single family residential buildings, except mobile homes.

Type 2 includes all attached single family residential buildings and all multiple dwelling residential buildings.

Type 3 includes mobile homes.

(2) The tables indicate the number of the building types for which these two measures are suggested.

(c) The suggested renewable resources measures are displayed by numerically designated regions within each State. These numerical designations by State and County are:

ALABAMA

1 Colbert
Franklin
Lauderdale
Lawrence

2 Blount
Calhoun
Cleburne
Cherokee
Cullman
DeKalb
Etowah
Jackson
Limestone
Madison
Marshall
St. Clair

3 Autauga
Barbour
Bibb
Bullock
Butler
Chambers
Chilton
Choctaw
Clay
Coosa
Crenshaw
Dale
Dallas
Elmore
Fayette
Greene
Hale
Henry
Jefferson
Lamar
Lee
Lowndes
Macon
Marengo
Marion
Montgomery
Perry

Pickens
Pike
Randolph
Russell
Shelby
Sumter
Talapooosa
Talladega
Tuscaloosa
Walker
Wilcox
Winston

4 Baldwin
Clarke
Coffee
Conecuh
Covington
Escambia
Geneva
Houston
Mobile
Monroe
Washington

ALASKA

1 Bettles
2 Bethel
3 Nome
4 Barrow
5 Fairbanks
6 Adak
7 Annette Island
8 Gulkana

9 Yakutat
10 Naknek
11 Homer

ARIZONA

1 Apache
Navajo
2 Cochise
Graham
Greenlee
3 Gila
Maricopa
Mohave
Pima
Pinal
Santa Cruz
Yuma
4 Coconino
5 Yavapai

ARKANSAS

1 Baxter
Benton
Boone
Carroll
Cleburne
Conway
Crawford
Franklin
Garland
Johnson
Logan
Madison
Marion
Montgomery
Newton

Perry
Polk
Pope
Saline
Scott
Searcy
Sebastian
Stone
Van Buren
Washington
Yell

2 Clay
Craighead
Crittenden
Cross
Faulkner
Fulton
Greene
Independence
Izard
Jackson
Lawrence
Lee
Lonoke
Mississippi
Monroe
Phillips
Poinsett
Prairie
Pulaski
Randolph
St. Francis
Sharp
White
Woodruff

3 Ashley
Bradley
Calhoun
Clark
Columbia
Dallas
Hempstead
Hot Spring
Howard

La Fayette	3	Modoc	Garfield	Weld	
Little River			LaPlata	Yuma	
Miller	4	Lassen	Mesa		
Nevada			Miguel	5	Cheyenne
Ouachita	5	Alameda	Montezuma	Kiowa	
Pike		Contra Cost	Montrose	Kit Carson	
Sevier		Marin	Rio Blanco	Lincoln	
Union		Mateo	San Juan	Prowers	
		Monterey	San Miguel		
4		San Benito		6	Baca
Arkansas		San Luis Obispo	3	Alamosa	Bent
Chicot		Santa Clara	Archuleta	Crowley	
Cleveland		Santa Cruz	Chaffe	Lasanimas	
Desha		Sonoma	Clear Creek	Otero	
Drew			Conejos	Pueblo	
Grant			Costilla		
Jefferson	6	Fresno	Custer		
Lincoln		Kern	Douglas		
		Kings	Eagle		
		Madera	El Paso		
		Mariposa	Fremont		
		Merced	Grand		
		Stanislaus	Gunnison		
		Tulare	Hinsdale		
		Tuolumne	Huerfano		
			Jackson		
			Jefferson		
			Lake		
			Mineral		
			Park		
			Pitkin		
			Rio Grande		
			Routt		
			Saguache		
			Summitt		
			Teller		
			4	Adams	
			Arapahoe		
			Boulder		
			Elbert		
			Larimer		
			Logan		
			Morgan		
			Phillips		
			Sedgwick		
			Washington		

CALIFORNIA

- 1 Del Norte
Humboldt
Mendocino
- 2 Amador
Butte
Calaveras
Colusa
Eldorado
Glenn
Lake
Napa
Nevada
Placer
Plumas
Sacramento
San Joaquin
Shasta
Sierra
Siskiyou
Sutter
Tehama
Trinity
Yol
Yuba

COLORADO

- 1 Moffat
- 2 Delta
Dolores

CONNECTICUT

- 1 Fairfield
Hartford
Litchfield
Middlesex
New Haven
New London
Tolland
Windham

DELAWARE

- 1 Kent
Newcastle
Sussex

FLORIDA

- 1 Bay
Calhoun
Escambia
Franklin
Gadsden
Gulf
Hamilton

	Holmes	Lee	Ben Hill	Marion
	Jefferson	Levy	Bibb	McDuffie
	Leon	Manatee	Bleckley	Meriweather
	Liberty	Martine	Burke	Monroe
	Madison	Monroe	Butts	Morgan
	Okaloosa	Nassau	Calhoun	Newton
	Santa Rosa	Palm Beach	Carroll	Oconee
	Taylor	Pasco	Chatta-Hoochee	Oglethorpe
	Wakulla	Pinellas	Clarke	Peach
	Walton	Putnam	Clay	Pike
	Washington	St. John	Clayton	Pulaski
		St. Lucie	Columbia	Putnam
2	Alachua	St. Petersburg	Columbus	Quitman
	Baker	Sarasota	Corvetta	Randolph
	Bradford	Suwanee	Crawford	Richmond
	Columbia	Volusia	Crisp	Rockdale
	Glades		Decatur	Schley
	Highlands		Dodge	Spalding
	Lake		Dooly	Stephens
	Marion		Dougherty	Stewart
	Okeechobee		Elber	Sumter
	Orange		Elbert	Talbot
	Osceola		Fayette	Taliamterro
	Polk		Franklin	Taylor
	Sanford		Fulton	Tarrell
	Sumter		Glascok	Troup
	Union		Greene	Turner
			Gwinnett	Twiggs
3	Brevard		Habersham	Upton
	Broward		Hall	Walton
	Charlotte		Hancock	Warren
	Citrus		Harris	Washington
	Clay		Hart	Webster
	Dade		Heard	White
	DeSoto		Henry	Wilcox
	Dixie		Houston	Wilkes
	Duval		Jackson	Wilkinson
	Flagler		Jasper	Worth
	Gilchrist		Jefferson	
	Gollier		Johnson	3 Appling
	Hardee		Jones	Atkinson
	Hendry		Lamar	Bacon
	Hernando		Laurens	Baker
	Hillsborough		Lee	Berrien
	Indian River		Lincoln	Brantley
	Lafayette		Macon	Brooks
			Madison	

GEORGIA

- 1 Bartow
- Chattooga
- Cherokee
- Cobb
- Dawson
- Douglas
- Fannia
- Floyd
- Forsyth
- Gilmer
- Gordon
- Haralson
- Lumpkin
- Murray
- Paulding
- Picxens
- Polk
- Rabun
- Union
- Walker
- Whitfield
- 2 Baldwin
- Banks
- Barrow

Bryan
Bulloch
Camden
Candler
Chalham
Charlton
Clinch
Coffee
Colquitt
Cook
Decatur
Early
Echols
Effingham
Emanuel
Evans
Glynn
Grady
Irwin
Jeff Davis
Jenkins
Lanier
Liberty
Long
Lowndes
McIntosh
Miller
Mitchell
Montgomery
Pierce
Seminole
Screren
Tattnall
Telfair
Thomas
Tift
Toombs
Treulten
Ware
Wayne
Wheeler

2 Honolulu
Mani

3 Nauai

IDAHO

1 Benewah
Bonner
Boundary
Clearwater
Kootenai
Latah
Lewis
Nez Perce
Shoshone

2 Ada
Adams
Boise
Canyon
Clark
Custer
Elmore
Gem
Idaho
Lemhi
Payette
Valley
Washington

3 Bannock
Bingham
Blaine
Bonneville
Butte
Camas
Cassia
Fort Hall
Fremont
Gooding
Jefferson
Jerome
Lincoln

Madison
Minidoka
Owyhee
Power
Teton
Twin Falls

4 Bear Lake
Caribou
Franklin
Oneida

ILLINOIS

1 Boone
Bureau
Carroll
Cook
Dekalb
Dupage
Henry
Jo Daviess
Kane
Kendall
Lake
Lee
McHenry
Mercer
Ogle
Rock Island
Stephensen
Whiteside
Will
Winnebago

2 Champaign
Clark
Coles
Crawford
Cumberland
DeWitt
Douglas
Edgar
Ford
Grundy

Henderson
Iroquois
Kankakee
Knox
LaSalle
Livingston
Logan
Marcon
Marshall
McLean
Moultrie
Peoria
Piatti
Putnam
Shelby
Stark
Tazewell
Vermillion
Warren
Woodford

3 Adams
Bond
Brown
Calhoun
Cass
Christian
Clinton
Fulton
Greene
Hancock
Jersey
Macoupin
Madison
Mason
McDonough
Menard
Monroe
Montgomery
Morgan
Pike
Randolph
Sangamon
Schuyler
Scott
St. Clair

HAWAII

1 Hawaii

4	Alexander Clay Edwards Effingham Fayette Franklin Gallatin Hamilton Hardin Jackson Jasper Jefferson Johnson Lawrence Marion Perry Pope Richland Saline Union Wabash Washington Wayne White Williamson	Boone Brown Carroll Cass Clark Clay Clinton Daviess Dearborn Decatur Delaware Fayette Floyd Fountain Franklin Fulton Grant Greene Hamilton Hancock Harrison Hendricks Henry Howard Huntington Jackson Jasper Jay Jefferson Jennings Johnson Knox Kosciusko Lawrence Madison Marion Martin Miami Monroe Montgomery Morgan Newton Ohio Orange Owen Parke Pulaski Putnam Randolph Ripley	Rush Scott Shelby Sullivan Switzerland Tippecanoe Tipton Union Vermillion Vigo Wabash Warren Washington Wayne Wells White Whiteley	Davis Decatur Dickinson Emmett Floyd Franklin Fremont Gordo Greene Grundy Guthrie Hamilton Hancock Hardin Harrison Hawk Henry Humboldt Ida Iowa Jasper Jefferson Johnson Koekuk Kosuth Louisa Lucas Madison Mahaska Marion Marshal Mills Monona Monroe Obrien Osceola Page Palo Alto Polk Plymouth Pocahontas Potowattamie Poweshiek Ringgold Sac Shelby Sioux Story Sama Taylor
5	Massac Pulaski	Jackson Jasper Jay Jefferson Jennings Johnson Knox Kosciusko Lawrence Madison Marion Martin Miami Monroe Montgomery Morgan Newton Ohio Orange Owen Parke Pulaski Putnam Randolph Ripley	3	Crawford Dubois Gibson Perry Pike Posey Spencer Vanderburgh Warrick
<u>INDIANA</u>		<u>IOWA</u>		
1	DeKalb Elkhart LaGrange Lake Laporte Marshall Noble Porter St. Joseph Starke Steuben	1	Adair Adams Appanoose Audubon Benton Black Boone Bremer Buena Vista Butler Calhoun Cass Carroll Cerro Cherokee Clarke Clay Crawford Dallas	
2	Adams Allen Bartholomew Benton Blackford			

Union	Lane	3	Allen	Boyle
Wapello	Logan		Anderson	Bracken
Warren	Meade		Atchison	Bullitt
Washington	Ness		Bourbon	Campbell
Wayne	Pawnee		Brown	Carroll
Webster	Rawling		Chase	Casey
Winnebago	Rush		Cherokee	Fayette
Woodbury	Scott		Clay	Franklin
Worth	Seward		Coffey	Gallatin
Wright	Sheridan		Crawford	Garrard
	Sherman		Doniphan	Grant
2 Allamakee	Stanton		Douglas	Harrison
Buchannon	Stevens		Elk	Henry
Cedar	Thomas		Franklin	Jefferson
Chickasaw	Trego		Geary	Jessamine
Clayton	Wallace		Greenwood	Kenton
Clinton	Wichita		Jackson	Lincoln
Delaware			Jefferson	Marion
Dubuque	2 Barber		Johnson	Nicholas
Fayette	Barton		Labette	Oldham
Howard	Butler		Leavenworth	Owen
Jackson	Cloud		Linn	Pendleton
Jones	Cowley		Lyon	Robertson
Linn	Dickinson		Marshall	Scott
Mitchell	Ellis		Miami	Shelby
Muscatine	Ellsworth		Montgomery	Spencer
Scott	Harper		Morris	Taylor
Winneshiek	Harvey		Nemaha	Trimble
	Jewell		Neosho	Woodford
	Kingman		Osage	
	Lincoln		Pottawatomie	2 Adair
	Marion		Riley	Allen
	McPherson		Shawnee	Barren
	Mitchell		Waubunsee	Breckinridge
	Norton		Washington	Butler
	Osborne		Wilson	Cuttenden
	Ottawa		Woodson	Cumberland
	Phillips		Wyandotte	Daviess
	Pratt			Edmonson
	Reno	4 Morton		Grayson
	Republic			Green
	Rice	5 Chautauqua		Hancock
	Rooks			Hardin
	Russell			Hart
	Saline			Henderson
	Sedgwick			Hopkins
	Smith			Larue
	Stafford			Livingston
	Sumner			McLean

PROPOSED RULES

	Mead	Marshall	2	Acadia	Kennebec
	Metcalfe	McCracken		Allen	Knox
	Monroe	Simpson		Ascension	Lincoln
	Muhlenberg	Todd		Assumption	Sagadahoc
	Ohio	Trigg		Beauregard	Waldo
	Russell			Calcasieu	Washington
	Union	5	Bell	Cameron	York
	Warren		Floyd	Davis	
	Webster		Harlan	East Baton Rouge	
			Knott	East Feliciana	
3	Bath		Knox	Evangeline	<u>MARYLAND</u>
	Boyd		Leslie	Iberia	1 Allegany
	Breathitt		Letcher	Iberville	Garret
	Carle		Martin	Jefferson	
	Carter		Perry	Lafayette	2 Washington
	Clay		Pike	LaFourche	
	Clinton		Whiteley	Livingston	3 Anne Arundel
	Elliott			Orleans	Baltimore
	Estill			Plaquemines	Calvert
	Fleming			Point Coupee	Caroline
	Greenup	<u>LOUISIANA</u>		St. Bernard	Carroll
	Jackson	1 Avoyelles		St. Charles	Cecil
	Johnson	Bien Ville		St. Helena	Charles
	Laurel	Bossier		St. James	Dorchester
	Lawrence	Caddo		St. John the	Frederick
	Lee	Caldwell		Baptist	Hartford
	Lewis	Catahoula		St. Landry	Howard
	Madison	Claiborne		St. Martin	Kent
	Magoffin	Concordia		St. Mary	Montgomery
	McCreary	DeSoto		St. Tammany	Prince Georges
	Menifee	East Carroll		Tangipahoa	Queen Annes
	Morgan	Franklin		Terrebonne	Talbot
	Owsley	Grant		Vermilion	
	Pulaski	Jackson		Washington	4 St. Marys
	Rockcastle	LaSalle		West Baton Rouge	Somerset
	Rowan	Lincoln		West Feliciana	Wicomico
	Wayne	Madison			Worcester
	Wolfe	Morehouse			
		Natchitoches			
4	Ballard	Quachita	<u>MAINE</u>		
	Caldwell	Rapides	1 Aroostook		<u>MASSACHUSETTS</u>
	Calloway	Red River	Franklin		1 Berkshire
	Carlisle	Richland	Oxford		Franklin
	Christian	Sabine	Penobscot		Hampden
	Fulton	Tensas	Piscataquis		Hampshire
	Graves	Union	Somerset		
	Hickman	Vernon			
	Logan	Webster	2 Androscoggin		2 Barnstable
	Lyon	West Carroll	Cumberland		Bristol
		Winn	Hancock		

Duke
Essex
Middlesex
Nantucket
Norfolk
Plymouth
Suffolk
Worcester

Genessee
Gladwin
Grand Traverse
Gratio
Hillsdale
Huron
Ingham
Iona

Washtenaw
Wayne
Wexford

Isanti
Lake
Kanabec
Kandiyohi
Meeker
Mille Lacs
Morrison
Pine
St. Louis
St. Paul
Sherburne
Stearns
Washington
Wright

MICHIGAN

1 Alger
Baraga
Chippewa
Delta
Dickison
Gogebic
Houghton
Iron
Neweeraw
Luce
Mackinac
Marquette
Menominee
Ontonagon
Schoolcraft

2 Alcona
Allegan
Alpena
Antrim
Arenac
Barry
Bay
Benzie
Berrien
Branch
Calhoun
Cass
Charlesvoix
Cheboygan
Clare
Clinton
Crawford
Eaton
Emmet

Iosco
Isabella
Jackson
Kalamazoo
Kalkaska
Kent
Lake
Lapeer
Leelanau
Lenawee
Livingston
Maconb
Manistee
Mason
Mecosta
Midland
Missaukee
Monroe
Montcalm
Montmorency
Muskegon
Newayco
Oakland
Oceana
Ogemaw
Osceola
Oscoda
Otsego
Ottawa
Presque Isle
Roscommon
Saginaw
St. Clair
St. Joseph
Samilac
Shiawassee
Tuscola
Van Buren

MINNESOTA

1 Becker
Beltrami
Big Stone
Cass
Chippewa
Clay
Clearwater
Crow
Douglas
Grant
Hubbard
Itasca
Kittson
Koochicking
Lac Qui Parle
Lake of the Woods
Manhomen
Marshall
Norman
Otter
Pennington
Polk
Pope
Red Lake
Roseau
Stevens
Swift
Todd
Traverse
Wadena
Wilkin

2 Aitkin
Anoka
Benton
Carlton
Chisago
Cook
Hennepin

3 Blue Earth
Brown
Carver
Dakota
Dodge
Faribault
Fillmore
Freeborn
Goodhue
Houston
LeSeur
Lyon
McLeod
Mower
Nicollet
Olmstead
Redwood
Renville
Rice
Scott
Sibley
Steele
Wabasha
Watonwan
Waseca
Winona
Yellow
Medicine

4 Cottonwood
Jackson

PROPOSED RULES

MISSOURI

Lincoln
Martin
Murray
Nobles
Pipestone
Rock

MISSISSIPPI

- 1 Alcorn
Benton
DeSoto
Marshall
Prentiss
Tate
Tippah
Tishomingo
Tunica
- 2 Atla
Calhoun
Carroll
Chicksaw
Choctaw
Claiborne
Clark
Coahoma
Copiah
Grenada
Hinds
Holmer
Humphreys
Issaquen
Itawamba
Jasper
Kempier
Lafayette
Lauderdale
Leake
Lee
Leftore
Lowndes
Madison
Monroe
Montgomery

Neshoba
Newton
Noxubee
Oktibbeha
Olivar
Panola
Pontotoc
Quitman
Rankin
Scott
Sharkey
Simpson
Smith
Sunflower
Tallahatchie
Union
Warren
Washington
Webster
Winston
Yalobusha
Yazoo

- 3 Adams
Amite
Davis
Franklin
Jefferson
Lawrence
Lincoln
Marion
Pike
Walthall
Wilkinson
- 4 Covington
Forrest
George
Greene
Hancock
Harrison
Jackson
Jones
Lamar
Pearl River
Perry
Stone
Wayne

- 1 Butler
Carter
Dunklin
Mississippi
New Madrid
Oregon
Pemiscot
Ripley
Scott
Stoddard

- 2 Barry
Howell
McDonald
Newton
Ozark
Stone
Taney

- 3 Barton
Camden
Cedar
Christian
Dade
Dallas
Dent
Douglas
Green
Hickory
Iron
Jasper
Laclede
Lawrence
Madison
Miller
Phelps
Polk
Pulaski
Reynolds
Shannon
Texas
Wayne
Webster
Wright

- 4 Adair
Andrew
Atchison
Audrain

Bates
Benton
Bollinger
Boone
Buchanan
Caldwell
Callaway
Cape Girardeau
Carroll
Cass
Chariton
Clark
Clay
Clinton
Cole
Cooper
Crawford
Daviess
De Kalb
Franklin
Gasconade
Gentry
Grundy
Harrison
Henry
Holt
Howard
Jackson
Jefferson
Johnson
Knox
Lafayette
Lewis
Lincoln
Linn
Livingston
Macon
Maries
Marion
Mercer
Monroe
Montgomery
Morgan
Nodaway
Osage
Perry
Petis
Pike
Platte
Putnam

Ralls
Randolph
Ray
St. Charles
St. Clair
St. Francois
Ste. Genevieve
Schuyler
Scotland
Shelby
Sullivan
Vernon
Warren
Washington
Worth

Gallatin Park
Golden Valley
Granite
Jefferson
Judith
Lewis and Clark
Madison
Meagher
Ravalli
Silver Bow
Stillwater
Sweet Grass
Wheatland
Yellowstone
National Park

Colfax
Cuming
Custer
Dakota
Dawson
Dixon
Dodge
Douglas
Garfield
Gosper
Greeley
Hall

Hamilton
Holt
Howard
Keya Paha
Knox

Lancaster
Loup
Madison
Merrick
Nance

Otoe
Philips
Pierce
Platte
Polk

Rock
Sarpy
Saunders
Seward
Sherman

Stanton
Thurston
Valley
Washington
Wayne
Wheeler
York

3 Hitchcock
Red Willow

4 Franklin
Furnas
Harlan
Kearney
Nuckolls
Webster

5 Adams
Clay
Gage
Jefferson
Johnson
Nemaha
Pawnee
Philmore
Richardson
Saline
Thayer

MONTANA

1 Flathead
Lake
Lincoln
Mineral
Missoula
Powell
Sanders

2 Blaine
Cascade
Chouteau
Daniels
Fergus
Glacier
Hill
Liberty
McCone
Phillips
Pondera
Richland
Roosevelt
Sheridan
Teton
Toole
Valley

3 Basin
Beaverhead
Broadwater
Carbon
Deer Lodge

4 Big Horn
Yellowstone

5 Carlton
Custer
Dawson
Fallon
Garfield
Musselshell
Petroleum
Powder
Prairie
River
Rosebud
Treasure
Wilboux

NEBRASKA

1 Cherry
Dawes
Sheridan

2 Antelope
Blaine
Boone
Boyd
Brown
Buffalo
Burt
Butler
Cass
Cedar

PROPOSED RULES

NEVADA

- 1 Elko
Humboldt
- 2 Eureka
Lander
Pershing
Washoe
White Pine
- 3 Carson City
Clarke
Churchill
Douglas
Esmeralda
Lincoln
Lyon
Mineral
Nye
Storey

NEW HAMPSHIRE

- 1 Coos
Grafton
- 2 Belknap
Carroll
Cheshire
Hillsboro
Merrimac
Rockingham
Stafford
Sullivan

NEW JERSEY

- 1 Atlantic
Bergen
Burlington
Camden
Cape May
Cumberland
Essex
Gloucester
Hudson
Hunterdon
Mercer
Middlesex
Monmouth
Morris
Ocean
Passaic
Salem
Somerset
Sussex
Union
Warren

NEW MEXICO

- 1 Colfax
Harding
Union
- 2 Chaves
Curry
DeBaca
Eddy
Guadalupe
Lea
Lincoln
Quay
Roosevelt
San Miguel
Torrance
- 3 Catron
Dona Ana
Grant
Hidalgo

- Luna
Otero
Sierra
- 4 San Juan
 - 5 Arriba
Bernalillo
McKinley
Sandoval
Santa Fe
Socorro
Valencia

- 6 Mora
Taos

NEW YORK

- 1 Clinton
Erie
Franklin
Genesee
Jefferson
Lewis
Monroe
Niagara
Onondaga
Orleans
Oswego
Saint Lawrence
Wayne
- 2 Essex
Saratoga
Warren
Washington
- 3 Chautauqua
- 4 Allegheny
Broome
Cattaraugus

NORTH CAROLINA

5	Cayuga	1	Alamance	Warren	5	Bladen
	Chemung		Alexander	Watauga		Brunswick
	Chenango		Alleghany	Wilkes		Carter
	Cortland		Ashe	Wilson		Columbus
	Hamilton		Avery	Yadkin		Craven
	Herkimer		Burke			Duplin
	Livingston		Cabarrus	2	Beaufort	Greene
	Madison		Caldwell		Bertie	Jones
	Oneida		Caswell		Camden	Lenoir
	Ontario		Catawba		Chowan	New Hanover
	Otsego		Chatham		Currituck	Onslow
	Schuler		Cleveland		Dare	Pamlico
	Seneca		Davidson		Gates	Pender
	Steuben		Davie		Hertford	Sampson
	Tioga		Durham		Hyde	Wayne
	Tompkins		Edgecombe		Martin	
	Wyoming		Forsyth		Pasquotank	
	Yates		Franklin		Perquimans	
			Gaston		Pitt	
			Granville		Tyrrell	
			Guilford		Washington	
6	Albany		Halifax	3	Buncombe	1. Barnes
	Delaware		Iredell		Cherokee	Benson
	Fulton		Johnston		Clay	Billings
	Greene		Lee		Graham	Botineau
	Montgomery		Lincoln		Haywood	Burke
	Rensselaer		McDowell		Henderson	Burleigh
	Schenectady		Mecklenburg		Jackson	Cass
	Schoharie		Montgomery		Macon	Cavalier
	Sullivan		Moore		Madison	Dickey
	Ulster		Nash		Mitchell	Divide
7	Columbia		Northampton		Swain	Dunn
	Bronx		Orange		Transylvania	Eddy
	Dutchess		Person		Yancey	Emmons
	Kings		Polk	4	Anson	Foster
	Manhattan		Randolph		Cumberland	Golden Valley
	Island		Rockingham		Harnett	Grand Forks
	Nassau		Rowan		Hoke	Grant
	Orange		Rutherford		Richmond	Griggs
	Putnam		Stanly		Robeson	Hettinger
	Queens		Stokes		Scotland	Kidder
	Richmond		Surry			Lamore
	Rockland		Union			Logan
	Suffolk		Vance			McHenry
	Westchester		Wake			McIntosh
						McKen
						McLean

NORTH DAKOTA

1.	Barnes
	Benson
	Billings
	Botineau
	Burke
	Burleigh
	Cass
	Cavalier
	Dickey
	Divide
	Dunn
	Eddy
	Emmons
	Foster
	Golden Valley
	Grand Forks
	Grant
	Griggs
	Hettinger
	Kidder
	Lamore
	Logan
	McHenry
	McIntosh
	McKen
	McLean

Oconee
Orangeburg
Pickens
Richland
Salvda
Spartanburg
Sumter
Union
York

Brookings
Brule
Buffalo
Campbell
Carson
Charles Mix
Clark
Clay
Davison
Dewey
Douglas
Edmunds
Faulk
Gregory
Hamlin
Hard
Hanson
Hughes
Hutchinson
Hyde
Jerauld
Jones
Kingsbury
Lake
Lincoln
Lyman
McCook
Mellette
Miner
Minnehaha
Moody
Potter
Sanborn
Spink
Stanley
Sully
Todd
Tripp
Turner
Union
Walworth
Yankton

Grant
Marshall
McPherson
Roberts

Sumner
Tipton
Trousdale
Wayne
Weakley
Williamson
Wilson

2 Allendale
Beaufort
Berkely
Charleston
Clarendon
Colleton
Dorchester
Florence
Georgetown
Hampton
Harry
Jasper
Marion
Williamsburg

SOUTH DAKOTA

1 Bennett
Butte
Custer
Fall River
Haakon
Harding
Jackson
Lawrence
Mead
Penington
Perkins
Shannon
Washabaugh
Ziebach

2 Aurora
Beadle
Bon Homme

3 Brown
Codington
Deul
Day

TENNESSEE

1 Clay
Macon

2 Benton
Carroll
Cheatham
Chester
Crockett
Davidson
Decatur
Dickson
Dyer
Fayette
Gibson
Giles
Hardeman
Hardin
Haywood
Henderson
Henry
Hickman
Houston
Humphreys
Lake
Lauderdale
Lawrence
Lewis
Madison
Maury
McNairy
Montgomery
Ohion
Perry
Robertson
Rutherford
Shelby
Smith
Stewart

3 Cumberland
Fentress
Jackson
Overton
Picket
Putnam
Scott

4 Anderson
Blount
Campbell
Carter
Claiborne
Cocke
Grainger
Greene
Hamblen
Hancock
Hawkins
Jefferson
Johnson
Knox
Loudon
Morgan
Roane
Sevier
Sullivan
Union
Washington

5 Bedford
Bledsoe
Bradley
Cannon
Coffee
DeKalb
Franklin
Grundy
Hamilton

PROPOSED RULES

Lincoln
Marion
McMinn
Meigs
Monroe
Moore
Polk
Rhea
Sequatchie
Van Buren
Warren
White

Ward
Winkler
Yoakum

3 Brewster
Culberson
El Paso
Hudspeth
Jeff Davis
Pecos
Presidio
Reeves
Terrell
Val Verde

Pinto
Scurry
Shackelford
Stephens
Stonewall
Swisher
Wheeler
Wilbarger
Wichita
Young

Mitchell
Nolan
Reagan
Real
Runnels
San Saba
Schleicher
Sterling
Sutton
Taylor
Tom Green
Upton
Uvalde
Webb
Wilson
Zapato
Zavala

TEXAS

1 Carson
Dallam
Deaf
Hansford
Harley
Hutchinson
Moore
Ochiltree
Oldham
Potter
Randall
Roberts
Sherman
Smith

2 Andrews
Bailey
Cochran
Crane
Dawson
Ector
Gaines
Hockley
Lamb
Loving
Lubbock
Lynn
Martin
Midland
Parmer
Terry

4 Hemphill
Lipscomb

5 Archer
Armstrong
Baylor
Borden
Briscoe
Castro
Childress
Clay
Collingsworth
Cottle
Crosby
Dickens
Donley
Fisher
Floyd
Foard
Garza
Gray
Hale
Hall
Hardeman
Haskell
Jack
Jones
Kent
King
Knox
Motley
Palo

6 Atascosa
Bandera
Bear
Blanco
Brown
Burnet
Callahan
Coleman
Coke
Comanche
Concho
Crockett
Dimmitt
Eastland
Edwards
Erath
Frio
Gillespie
Glasscock
Hamilton
Howard
Irion
Karnes
Kendall
Kerr
Kimble
Kinney
Lampasas
LaSalle
Llano
Maverick
Mason
McCulloch
McMullen
Medina
Menard
Mills

7 Anderson
Angelina
Bastrop
Bell
Bosque
Brazos
Burleson
Caldwell
Cherokee
Collin
Comal
Cook
Coryell
Celta
Denton
Ellis
Falls
Fannin
Franklin
Freestone
Gonzales
Grayson
Gregg
Grimes
Guadalupe
Hays
Henderson
Hill
Hood

UTAH

Hopkins	9	Austin
Houston		Brazoria
Hunt		Chambers
Johnson		Colorado
Kauffman		Dewitt
Lamar		Fayette
Lee		Ft. Bend
Leon		Galveston
Limestone		Hardin
Madison		Harris
McLennan		Jackson
Milam		Jasper
Montague		Jefferson
Nacogdoches		Lavaca
Navarro		Liberty
Parker		Matagorda
Polk		Montgomery
Rains		Newton
Red River		Orange
Robertson		Victoria
Rusk		Waller
San Jacinto		Wharton
Smith		
Somervill	10	Alice
Tarrant		Aransas
Titus		Bee
Trinity		Brooks
Travis		Calhoun
Tyler		Cameron
Upshur		Duval
Van Zandt		Goliad
Walker		Hidalgo
Washington		Jim Hogg
Williamson		Kennedy
Wise		Kleburg
Wood		Live Oak
		Nueces
8 Bowle		Refugio
Cass		San Patricio
Harrison		Starr
Marion		Wallacy
Panola		
Sabine		
San Augustine		
Shelby		

1	Box Elder
	Cache
	Carbon
	Dagget
	Davis
	Duchesne
	Juab
	Morgan
	Rich
	Salt Lake
	Sanpete
	Summit
	Tooele
	Utah
	Vintah
	Wasatch
	Weber
2	Beaver
	Garfield
	Iron
	Kane
	Millard
	Piute
	Sevier
	Washington
3	Emery
	Grand
	San Juan
	Wayne

VERMONT

1	Addison
	Caledonia
	Chittenden
	Essex
	Franklin
	Grand Isle
	Lamoille
	Orange
	Orleans

	Rutland
	Washington
	Windsor
2	Bennington
	Windham

VIRGINIA

1	Alleghany
	Augusta
	Bath
	Bland
	Botetort
	Buchanan
	Clarke
	Craig
	Dickinson
	Frederick
	Giles
	Highland
	Lee
	Montgomery
	Page
	Pulaski
	Roanoke
	Rockbridge
	Rockingham
	Russell
	Scott
	Shenandoah
	Smyth
	Tazewell
	Warren
	Washington
	Wise
	Wythe
2	Albemarle
	Amelia
	Amherst
	Appomattox
	Bedford

PROPOSED RULES

Brunswick	Isle of Wight	Okanogan	Gilmer
Buckingham	James City	Perd Oreille	Grant
Campbell	King and Queen	Skamania	Greenbrier
Caroline	King William	Stevens	Hampshire
Carroll	Lancaster		Hardy
Charlotte	Matthews	4 Adams	Harrison
Chesterfield	Middlesex	Asotin	Jefferson
Culpeper	New Kent	Benton	Kanawha
Cumberland	Newport News	Columbia	Lewis
Dinwiddie	Norfolk	Douglas	Lincoln
Fauquier	Northumberland	Franklin	Logan
Floyd	Portsmouth	Garfield	Marion
Fluvanna	Prince George	Grant	McDowell
Franklin	Richmond	Lincoln	Mercer
Grayson	Southampton	Spokane	Mineral
Greensville	Suffolk	Walla Walla	Mingo
Greene	Surry	Whitman	Monongalia
Goochland	Sussex		Monroe
Halifax	Westmoreland		Morgan
Hanover	Virginia Beach		Nicholas
Henrico	York		Pendleton
Henry			Pocahontas
King George			Preston
Louisa			Raleigh
Lunenburg			Randolph
Madison			Summer
Mecklenburg			Taylor
Nelson			Tucker
Notaway			Upshur
Orange			Webster
Patrick			Wyoming
Pittsylvania			
Powhatan			
Prince Edward			
Rappahanock			
Spotsylvania			
Stafford			
3 Arlington			
Fairfax			
Loudon			
Prince William			
4 Charles City			
Essex			
Gloucester			

WASHINGTON

- 1 Clallam
Grays Harbor
Jefferson
Mason
Pacific
Wahkiakum
- 2 Clark
Cowlitz
Island
Kiry
Kitsap
Lewis
Pierce
Skagit
Snohomish
Whatcom
- 3 Chelan
Ferry
Kittitas

WEST VIRGINIA

- 1 Brooke
Cabell
Doddridge
Hancock
Jackson
Marshall
Mason
Ohio
Pleasants
Putnam
Ritchie
Roane
Tyler
Wayne
Wetzel
Wirt
Wood
- 2 Barbour
Berkeley
Boone
Braxton
Calhoun
Clay
Fayette

WISCONSIN

- 1 Ashland
Barren
Bayfield
Burnett
Chippewa
Douglas
Dunn
Eau Claire
Florence
Forest
Iron

	Langlade	Racine	7	Lincoln
	Lincoln	Richland		Uinta
	Marinette	Rock		
	Oconto	Sauk		
	Oneida	Shawarro		
	Polk	Sheboygan		
	Price	Trempealeau		
	Rusk	Vernon		
	St. Croix	Walworth		
	Sawyer	Washington		
	Taylor	Waukesha		
	Vilas	Waupaca		
	Washburn	Waushara		
		Winnebago		
		Wood		
2	Adams			

Brown
Buffalo
Calumet
Clark
Columbia
Crawford
Dane
Dodge
Door
Fond du Lac
Grant
Gree Lake
Green
Iowa
Jackson
Jefferson
Juneau
Kenosha
Kewaunee
La Crosse
Lafayette
Mantowoc
Marathon
Marquette
Menominee
Milwaukee
Monroe
Outagamie
Ozaukee
Perin
Pierce
Portage

WYOMING

- 1 Yellowstone
National Park
Park
- 2 Big Horn
Johnson
Sheridan
- 3 Campbell
Crook
Niobrara
Weston
- 4 Carbon
Fremont
Sublette
Sweetwater
Teton
- 5 Albany
Converse
Hot Springs
Natrona
Washakie
- 6 Goshen
Laramie
Platte

STATE : ALABAMA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : ALASKA (1)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
2	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
3	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
4	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
5	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
6	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
7	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
8	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		

STATE : ALASKA (2)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
9	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
10	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
11	ELECTRICITY				X	X	
	OIL				X		
	NATURAL GAS				X		
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: ARIZONA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X		1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X	1,2	1,2,3	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: ARKANSAS

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: CALIFORNIA (1)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X	2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X	1	1	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
7	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
8	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X

STATE : CALIFORNIA (2)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
9	ELECTRICITY	x			x	x	x
	OIL	x			x		x
	NATURAL GAS	x			x		x
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: COLORADO

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: CONNECTICUT

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: DELAWARE

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: DISTRICT OF COLUMBIA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: FLORIDA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: GEORGIA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: HAWAII

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: IDAHO

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: ILLINOIS

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : INDIANA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: IOWA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : KANSAS

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : KENTUCKY

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: LOUISIANA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : MAINE

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MARYLAND

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		
	NATURAL GAS	X			X		
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MASSACHUSETTS

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MICHIGAN

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MINNESOTA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : MISSOURI

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MISSISSIPPI

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: MONTANA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
5	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NEBRASKA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NEVADA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X	1,2	1,2	X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X	1,2	1,2	X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NEW HAMPSHIRE

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NEW JERSEY

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : NEW MEXICO

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X		1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : NEW YORK

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
7	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NORTH CAROLINA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: NORTH DAKOTA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: OHIO

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: OKLAHOMA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X		1	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: OREGON

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
5	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
6	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: PENNSYLVANIA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: PUERTO RICO

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	x			x	x	x
	OIL	x			x		x
	NATURAL GAS	x			x		x
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: RHODE ISLAND

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	x			x	x	x
	OIL	x			x		x
	NATURAL GAS	x			x		x
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: SOUTH CAROLINA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : SOUTH DAKOTA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: TENNESSEE

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
5	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: TEXAS (1)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X	1	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
5	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
6	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
7	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
8	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X

STATE: TEXAS (2)

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
9	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
10	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : UTAH

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X	1,2	1,2	X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: VERMONT

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : VIRGINIA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
3	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
4	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: WASHINGTON

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : WEST VIRGINIA

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY	X			X		X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE : WISCONSIN

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X	X	X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY	X			X	X	X
	OIL	X			X		X
	NATURAL GAS	X			X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

STATE: WYOMING

REGION	FUEL DISPLACED	SOLAR MEASURE					
		D	S	D/S	P	W	H
1	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
2	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
3	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
4	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
5	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
6	ELECTRICITY				X		X
	OIL				X		X
	NATURAL GAS				X		X
	ELECTRICITY						
	OIL						
	NATURAL GAS						
	ELECTRICITY						
	OIL						
	NATURAL GAS						

[6450-01-M]

APPENDIX II TO PART 456

BILLING DISPUTES RESOLUTION

(a) The biller must acknowledge receipt of the complaint within 30 days after receipt, unless resolution occurs during such 30-day period, and must resolve the dispute prior to taking any action to collect the disputed portion.

(b) To resolve a billing dispute, the biller shall, within two complete billing cycles (in no event more than 90 days) of receipt of the notification:

(i) Correct the account for any disputed portions (plus related penalties) when the complaint is justified and notify the customer of the correction; or

(ii) Where applicable, notify the customer of disputed amounts when investigation shows the complaint is unjustified (together with documentary evidence requested), including the reasons why such amounts are believed to be correct.

(c) The biller shall permit the customer at least 10 days from receipt of the notification described in (b) to pay any disputed amounts that are properly due. Where the customer pays within this time period, no late charges, acceleration of undisputed portions of the debt, reporting of non-payment or of the existence of a dispute to any third party, or other penalties shall accrue as a result of withholding of disputed portions.

(i) After receiving notification of a billing error, the biller may not directly or indirectly, threaten to report adversely to any person regarding the customer's credit standing or credit rating because of the customer's failure to pay the amount specified in such notification as being a billing error, or any finance charges, late payment charges, or other charges imposed thereon, nor shall such amount be reported as delinquent or as being

in dispute, to any third person unless such amount remains unpaid after the biller has complied with all the requirements of this Paragraph and has allowed that customer the same number of days thereafter to pay as it customarily or by agreement allows, whichever is longer (in no case less than 10 days), for the customer to pay undisputed amounts so as to avoid the imposition of additional finance charges, late payment charges, or other charges.

(ii) If, within the time limit allowed for payment in Subparagraph (i), the biller receives a further written notification from the customer that any portion of a billing error resolved under this paragraph is still in dispute, the biller may not report to any third party that such disputed amount is delinquent unless the biller also reports that the amount or account is in dispute and, at the same time, notifies the customer in writing of the name and address of each party to whom the biller is reporting information concerning the disputed amount. If, pursuant to this Subparagraph, a biller has reported a disputed amount as being delinquent to any third person, the biller shall report promptly in writing to any such person subsequent resolution of the reported delinquency.

(iii) If a biller has reported an amount as being delinquent to any third person who is in the business of collection and disseminating information relating to the creditworthiness of customers, and such amount is subsequently disputed by the customer, the biller shall, within one billing cycle after receipt of proper written notification of the billing error, mail or deliver a written notice to each such third person to whom the delinquency was reported that the amount is in dispute.

[FR Doc. 79-7797 Filed 3-13-79; 8:45 am]

Registered
Federal
Property

MONDAY, MARCH 19, 1979

PART III



DEPARTMENT OF
THE INTERIOR

Bureau of Land
Management

COAL MANAGEMENT

Proposed Rulemaking

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Group 3400]

COAL MANAGEMENT

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rulemaking sets out the procedures the Secretary of the Interior proposes to use in carrying out the authority granted him to manage Federally-owned coal through leasing or exchange under the provisions of the Mineral Leasing Act of 1920, as amended; the Mineral Leasing Act for Acquired Lands, as amended; the Federal Land Policy and Management Act of 1976; the Surface Mining Control and Reclamation Act of 1977; the Multiple Mineral Development Act and other related Acts. These procedures are to be carried out in a manner that will afford protection for the environment.

DATE: Comments by May 18, 1979. Only those comments received by the above date will be considered.

ADDRESS: Comments are to be sent to: Director (210), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular working hours (7:45 a.m.-4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Don Mitchell, 202-343-4537, or Robert C. Bruce, 202-343-8735.

SUPPLEMENTARY INFORMATION: This proposed rulemaking is designed to establish the procedures that the Secretary of the Interior will use to carry out his authority to manage Federal coal, through leasing or exchanging of coal interests and other actions. This authority is granted under the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); the Multiple Mineral Development Act (30 U.S.C. 521 et seq.); and the Department of Energy Organization Act (42 U.S.C. 7191 et seq.). These procedures are to be carried out in a manner that will afford protection for the environment.

This proposed rulemaking consolidates all regulations concerning the management of coal in a new Group 3400 in Title 43. At the present time, coal is handled in the same manner as other leasable minerals (except oil and gas) and is covered by the provisions of Part 3500 of Title 43 of the Code of Federal Regulations. Because of the special considerations required in the disposal of coal in recently enacted legislation, it was decided that the coal program of the Department of the Interior needed special handling and all references to coal should be removed from Part 3500 and placed in a new group that addresses coal exclusively. In addition, Part 3500 will be rewritten to eliminate all references to coal and to make Part 3500 easier to read and understand.

This proposed rulemaking is a further step by the Department of the Interior in carrying forward a new Federal coal management program. This new program was initiated in response to the President's May 23, 1977, Environmental Message; the President's May 24, 1977, direction to the Secretary of the Interior to establish and implement an environmentally-sound comprehensive Federal coal management program; and the President's Energy Plan of April 29, 1977, which stressed the need to increase national coal production to meet the Nation's growing energy needs while diminishing its dependence on imported oil and gas. The statutory base for coal management has been altered substantially over the last three years by the passage of the Federal Coal Leasing Amendments Act of 1976, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Department of Energy Organization Act of 1977, and the Federal Coal Leasing Amendments of 1978. This new statutory and program direction is reflected in the proposed rulemaking.

On September 27, 1977 in *NRDC v. Hughes*, 437 F. Supp. 981 (D.C. 1977), modified 454 F. Supp. 148 (D.C. 1978) it was held that the 1975 final environmental statement on a proposed Federal coal management program (termed Energy Minerals Activity Recommendation System (EMARS)) was inadequate. The accompanying order required the Department of the Interior to prepare a supplement to that environmental statement which would address certain coal management issues. The Secretary chose not to simply publish a supplement but instead to develop a new program responsive to the many statutory changes and new program directions which had been made since the filing of the 1975 statement. As a result, an entirely new draft environmental

statement was issued on December 15, 1978, which addresses a new preferred alternative coal management program.

In that environmental statement, as appendix A, was a set of example regulations for the preferred alternative. As a first step in the rulemaking process, the Department of the Interior published a notice of intent to propose rulemaking in the *FEDERAL REGISTER* of December 15, 1978 (43 FR 58776), which requested comments on the example rulemaking in the draft environmental statement. The notice of intent requested comments by February 13, 1979, but a later notice made it clear that any comments received prior to publication of the proposed rulemaking would be considered.

As a result of the notice of intent to propose rulemaking, the Department of the Interior received 22 written comments. Six of the comments were from mining companies, four were from Federal agencies, seven were from interest groups, with three representing industry interest groups and four representing environmental interest groups, one comment was from a State governmental agency and four were from private individuals. Oral comments were received at hearings and meetings held on the environmental statement. In addition, written comments submitted on the draft environmental statement after close of the comment period, to the extent they were relevant, were treated as comments on the notice of intent to propose rulemaking. Each of the written comments and all of the oral comments received were carefully considered during the preparation of the proposed rulemaking and are discussed as part of this preamble.

Subpart 3400 contains material that applies generally to all the subparts of the proposed Group 3400. It contains: Citations to the statutory authorities exercised in promulgating this proposed rulemaking; a division of responsibilities among the agencies in the Department of the Interior that have a role in managing Federal coal; definitions of the terms used throughout Group 3400; a statement of the Federal lands that are subject to the provisions of the group, especially the leasing provisions of Group 3400; and a description of the membership and functions of the regional coal teams that have a central role in administering the provisions of Group 3400.

The authorities section lists all statutes that are significant sources of authority for the proposed rulemaking. Each subsequent subpart of the proposed rulemaking contains a reference to this general list and notes a specific statute or section of a statute only if that subpart chiefly implements or is chiefly derived from that authority. The example regulations carried the

authorities cited in the existing Group 3500 regulations into each of its subparts, with the addition of authorities that did not exist when the coal regulations were last revised in 1976. The proposed rulemaking alters only the format of the example rulemaking, as indicated above. No comments were received on the authorities section of the example rulemaking. The responsibilities section was not in the existing Group 3500 regulations. The surface management regulations for mining operations (43 CFR Subpart 3041, May 17, 1977) contain some of the material, but their scope is not as broad and the passage of the Surface Mining Control and Reclamation Act changed much of those regulations.

The responsibilities section appeared for the first time in the example rulemaking and is carried forward into the proposed rulemaking with several changes. One noteworthy change in section 3400.04 is the qualification in section 0-4(a)(1) that makes it clear that only the Office of Surface Mining Reclamation and Enforcement will formally designate lands unsuitable for mining operations under section 522(c) of the Surface Mining Control and Reclamation Act. In addition, section 0-4(c)(6) was added to ensure the inclusion of the Office of Surface Mining Reclamation and Enforcement's role as the negotiator of cooperative agreements with the States on State enforcement of reclamation laws on federal lease operations under section 523(c) of the Surface Mining Control and Reclamation Act.

Two comments were offered on the responsibilities section of the example rulemaking. The first comment suggested that the Fish and Wildlife Service could not carry out its responsibilities under the rulemaking unless it had the authority to designate lands unsuitable for coal development rather than simply recommending lands as unsuitable. The Secretary of the Interior by authorization of the Surface Mining Control and Reclamation Act has delegated the authority to designate lands as unsuitable to the Office of Surface Mining Reclamation and Enforcement.

The agency making the unsuitability determination will give careful consideration to the recommendations of the Fish and Wildlife Service prior to making its final decision.

A second comment on the responsibilities section recommended that the Bureau of Land Management be required to obtain the concurrence of the land owner, if it is someone other than the Federal Government, before determining an appropriate postmining land use of surface-mined lands. Postmining land use is determined through the Bureau of Land Management's land use planning process, reaf-

firmed at time of lease offering, and again during review of the mining and reclamation permit application. Where private surface overlays Federal coal, the surface owner's choice of postmining land use is given the highest priority, subject to provisions of the Surface Mining Control and Reclamation Act (See 30 CFR 780.23, 816.131) and mitigating measures during the environmental assessment process under the National Environmental Policy Act of 1969. No changes were made in the proposed rulemaking as a result of the comments offered. In fact, the proposed rulemaking requires surface owner approval of any land use substantially different from the premining land use (§ 3465.4).

The terms in the definitions section were drawn from all subparts of the present Group 3500 regulations. These were substantially supplemented by definitions in the example rulemaking to incorporate terms introduced by new legislation as well as to clarify existing usage. The proposed rulemaking is even more inclusive in an attempt to make the use of terms in each subpart of the proposed rulemaking consistent and to reduce ambiguity and confusion. To make the usage consistent throughout the new Group 3400, new definitions were added to those in the example regulations for the following terms: Bypass coal; compliance bond; Federal lands; lease; licensee; and license to mine. The definition of commercial quantities in § 3400.0-5(i) was corrected from the example regulations—subsection (i)(2) was changed from "lease issued after August 4, 1976," to "lease issued before August 4, 1976".

Definitions relating to functions of the Office of Surface Mining Reclamation and Enforcement or terms that apply to mining operations on private lands and the Federal lands review are intended to be the same as those contained in the permanent program regulations of the Office of Surface Mining Reclamation and Enforcement. The timing of the publication of that agency's final rulemaking and this proposed rulemaking has made it difficult to assure that all definitions are identical in substance, if not in wording. Any discrepancies between the definitions and other aspects of the two rulemakings will be resolved in the preparation of the final rulemaking for this program.

Several comments were directed to the definitions section of the example rulemaking. One comment suggested that the definition of the term "fair market value" include not only the bonus payment but also rentals and royalties. The comment pointed out that the higher royalties have the effect of lowering the bonus in a fair market value estimate. After careful

consideration, a minor change was made in the definition of the term "fair market value".

The definition of the term "logical mining unit" drew two comments that asked for a change in the 25,000 acre limitation and the 40 year limitation incorporated in the definition. These limitations are statutorily imposed and cannot be changed.

A comment suggested changes in the definition of the term "maximum economic recovery". Even though the comment was considered and no change was made in the definition, the Department of the Interior solicits comments on whether the term should be redefined to use the marginal cost and the marginal revenue of all seams, to use strictly the average cost and average revenue of all seams, or to use some other definition. Under the present definition, a lessee will mine those seams which can be collectively extracted at a normal level of profit with consideration given to social and economic costs.

An interagency task force is presently considering the methods employed by the Department in determining fair market value and the proposal for determining maximum economic recovery. The task force report will be submitted in April, will be made public, and will be considered by the Secretary when he renders his decision on these proposed regulations.

Finally, a comment on the definition of the term "written consent" suggested that the term "negative consent" should also be defined. This comment has not been adopted because the refusal to give consent process is fully described in §§ 3420.2-3 and 3420.6 of the proposed rulemaking.

Sections 3400.1 through 3400.3 are derived from the coal related provisions of the existing Subparts 3500 and 3501. These sections are the focus of two comments. The first comment indicated that § 3400.3-1 was in conflict with § 3420.2-5. An analysis of the two sections did not disclose any such conflict and no changes have been made in either of the two sections of the proposed rulemaking.

A second comment from the same source requested changes in § 3400.3-3 of the example rulemaking. The first change would require the Secretary of Agriculture to make a formal finding for decisions under § 3400.3-3(b)(2). The second change was to provide some method of appeal or protest within the Department of the Interior, when it is alleged that the finding cannot be sustained. The comment also suggested that a possible alternative way of achieving the same result—providing for a review of the facts in contention when the decision is made by another agency—might be to allow the Department of the Interior to

lease under these conditions only when such leasing is in accord with a land use plan developed under the National Forest Management Act, thereby allowing the issue to be contested under the Department of Agriculture's planning rules. The change proposed in the comment has not been adopted because the Secretary of Agriculture essentially makes a formal finding under § 3400.3-3(b)(2) when potential coal leasing is found compatible with other uses during the Forest Service land use planning process under the provisions of the National Forest Management Act. Also, the Department of the Interior affords the right of appeal to any party adversely affected by a decision of an officer of the Bureau of Land Management or an Administrative Law Judge. The Department of Agriculture has a similar appeals procedure. In addition, (1) a person adversely affected by a decision to lease for surface mining can submit a petition to have lands classified as unsuitable for surface mining, and (2) any decision to lease coal, whether for surface mining on National Forest lands or otherwise, is automatically subject to environmental assessment, not only through the land use planning process, but also through the requirements of the National Environmental Policy Act of 1969 and Council on Environmental Quality regulations in 40 CFR Part 1500.

Section 3400.4 of the proposed rulemaking was not in either the existing Group 3500 regulations or in the example rulemaking. This set of sections proposes to establish regional terms that will be central to the administration of the new coal program. This proposal formalizes the Department's commitment of close Department-State relations in administering program functions and the Department's commitment to conduct its coal management decisionmaking in a manner which ensures that it considers all cumulative region-wide impacts of its decisions. The regional coal teams' functions are found in the substantive provisions of the proposed rulemaking. Since this is an entirely new section, no comments were received on it and the public is asked to be particularly alert to these provisions when making comments on the proposed rulemaking. The proposed regions will be set out in the final environmental impact statement and in an appendix to this notice. Comments are specifically requested on these proposed regions.

Subpart 3410 governs all pre-lease exploration activity for coal for commercial purposes on Federal lands. The provisions of the proposed rulemaking are primarily taken from Subpart 3507 of the existing regulations. These were established in January 1977 to implement the Federal Coal

Leasing Amendments Act of 1976 which repealed the former prospecting permit system of coal exploration on public lands. The proposed rulemaking is carried over from the example rulemaking with some changes: The sections have been reordered so that the rulemaking follows the chronology of the licensing process; and provisions have been made for publishing the notice soliciting participants in the exploration upon the filing of an application for a license. The latter change should expedite license issuance; participants will be solicited while the exploration plan is being reviewed and approved, not afterwards.

In addition, § 3410.3-4(c) was added concerning exploration for Federal coal on split estate lands where the surface is under private ownership (whether or not the owner is qualified for the purpose of consent for leasing).

Three different comments were received on this subpart of the example rulemaking. One comment of a general nature on exploration licenses suggested that an exploration license granted by the Bureau of Land Management would be duplicative of exploration permits authorized by the Surface Mining Control and Reclamation Act. The only licenses to explore for coal on unleased public lands will be those authorized under this subpart.

A comment on § 3410.2-1 of the example rulemaking, which has been renumbered § 3410.2-2 in the proposed rulemaking, suggested that wording be included that would require consultation with the U.S. Geological Survey in the assessment of the potential effect of a coal exploration program on an area and its environment. This comment was adopted.

Another comment recommended that § 3410.2-1 of the example rulemaking, which has been renumbered § 3410.2-2 in the proposed rulemaking, be deleted since it appears to be unnecessary. The comment suggested that an environmental statement should not be considered for an exploration license because exploration is only an information gathering activity and information gathering activity is permitted only if there is no substantial disturbance. Presently, an environmental statement will be done only when it is required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The section has been retained, but the Department proposes to request a categorical exclusion for the issuance of exploration licenses from the environmental statement requirements of the National Environmental Policy Act under the regulations of the Council on Environmental Quality (40 CFR 1508.4, 43 FR 56003). This exclusion is being requested be-

cause exploration under a license is not supposed to cause substantial disturbance to the natural land surface.

A second comment from the same source recommended that the Bureau of Land Management, rather than the applicant, publish the Notice of Invitation which the proposed rulemaking requires. This suggestion was based on the fact that the applicant received no preference right in return for the exploration data received at little or no cost to the Federal Government. Since the exploration licenses yield no revenue to the Federal Government, the costs involved in an exploration permit should be borne by the applicant.

A final comment on Subpart 3410 of the example rulemaking suggested that exploration results obtained under a license may need to be held confidential even after an area has been leased where other private holdings are at issue or surface owner consent negotiations with the Government may be taking place. The suggested change was not adopted because it would be inconsistent with the Federal Coal Leasing Amendments Act.

The Department of the Interior has been informed that some coal exploration is done in the guise of uranium exploration, since the two minerals may both be identified by identical methods and both may reasonably be thought to underlie the same lands. Coal exploration for commercial purposes without an exploration license constitutes trespass against the United States. To assist in administering the law, the Department solicits comments on how widespread such a practice might be and how the Department might best act to prevent this trespass, and to acquire the data respecting Federal coal deposits Congress intended it should have to administer a coal management program.

Subpart 3420 contains the general competitive coal leasing provisions that are proposed to replace the Energy Mineral Activity Recommendation System (EMARS) now in Subpart 3535 of existing regulations. The enforcement of EMARS as enjoined by the U.S. District Court for the District of Columbia in *NRDC v. Hughes*, 437 F. Supp. 981 (D.D.C. 1977), modified, 454 F. Supp. 148 (D.D.C. 1978). This new leasing process is set out as an integral part of the preferred alternative in the Draft Environmental Statement on the Federal Coal Management Program, and is discussed at greater length there. The example rulemaking sets out the chronology of the land use planning and activity planning process that would be completed before a competitive lease sale. The provisions of §§ 3420.1 through 3420.1-5 prescribe the screening steps that must be completed in the proce-

before lands can be considered acceptable for further consideration for leasing. Section 3420.1-5 requires that a land use plan, or under certain circumstances, a land use analysis, be conducted for Federal lands before an area can be considered for lease sale.

The land use plan requirement in § 3420.1-5 has been clarified to establish more clearly what organizational unit is chiefly responsible for the completion of land use plans on what lands, and to clarify the Secretary's authority, in the absence of a Federal agency plan or in the absence of a relevant State plan, to conduct a land use analysis. The revision is designed both to clarify the importance of a completed land use plan (or land use analysis) as a statutory prerequisite to leasing, and to conform this proposal to the proposed Bureau of Land Management planning regulations for Group 1600 of Title 43 (43 FR 58764-58774).

The provisions of §§ 3420.2 through 3420.2-7 describe the land use planning process necessary on lands administered by the Bureau of Land Management before those lands will be considered acceptable for further consideration for leasing; this process is conducted as an integral part of Bureau-wide land use planning, but specific steps must be taken during planning to screen lands that should be considered during coal activity planning. Section 3420.2-3 sets out the screening that is to be applied to all coal-bearing lands during the land use planning. The high and medium coal development potential and surface owner consultation screening processes have been modified from those contained in the example rulemaking. Just as § 3420.1-5 was revised to make it consistent with the proposed group 1600 rulemaking, § 3420.2, governing coal-related land use planning required before an area will be identified as acceptable for further consideration for leasing, was also revised in some respects. The requirements in this section would not supersede or modify any requirements of the proposed group 1600 rulemaking, and are intended to be fully consistent with them. The texts of § 3420.1-5 and the sections under § 3420.2 dealing with land use planning are not verbatim copies of the group 1600 rulemaking. Additional text has been added in order to specify the details that will be required in land use plans to be prepared under the procedures of the Group 1600 rulemaking for lands containing coal deposits subject to leasing.

The Bureau of Land Management has chosen to repeat certain provisions, such as requirement for consultation with qualified surface owners in section 714(d) of the Surface Mining Reclamation and Enforcement Act, in both the proposed land use planning

rulemaking and this proposed rulemaking (43 CFR 1601.3(f), and 3420.2-2(d)) rather than raise a question as to their omission from a prominent place in either the land use planning process or the coal management program. The consultation process is unchanged by the dual reference. The Bureau of Land Management will closely coordinate its review of the related comments on the two proposed rulemakings, and will closely coordinate the drafting of final rules to avoid any inconsistency between the two sets of final rulemakings.

A new subsection has been added to the initial land use planning screening procedure where all but high and medium coal potential lands are screened out from further consideration for leasing. The subsection would assure that companies and the public have the opportunity to submit information on the coal resource, and that this screen is applied with the broadest possible data available to the land use planners. This valuable resource information gathering step is not, however, a call for expressions of leasing interest, but an opportunity to submit coal resource data.

The public is asked to give careful consideration to the provisions for consultation in the land use planning process and the impact that the non-mining preference can have on land use planning. The use of the firm intent not to provide consent disclosure and its impact on the management program is an area on which comment is specifically requested (see discussion of firm intent disclosure in preamble discussion of Subpart 3427).

The provisions of § 3420.3 through § 3420.3-4 contain an element absent from EMARS: The establishment of regional leasing targets to guide the post-land use planning coal management decisionmaking. This group of sections has been revised in the proposed rulemaking in these major respects: (1) It now shows more explicitly and directly how the leasing target setting process is tied to the Department of Energy's national coal production goals, and the Memorandum of Understanding between the Department of the Interior and the Department of Energy on setting and using those national goals; (2) it establishes the distinction between regional coal production goals generally and the Department of the Interior's regional leasing targets—the amount of coal, both Federal and non-Federal able to be developed only in conjunction with Federal coal, that the Department of the Interior will consider readying for production in its current four-year competitive leasing cycle; and (3) it describes the role of the regional coal team in the process of setting regional leasing targets.

The provisions of §§ 3420.4 through 3420.4-6 set out the activity planning (as opposed to land use planning) steps. This is the process for selecting tracts for leasing and exchange of coal interests from lands that have been identified in the land use plans, after the land use planning screening has been fully applied, as areas acceptable for further consideration for leasing. Each discrete step is set out in §§ 3420.4 through 3420.4-6: calls for expression of leasing interest; tract delineation, the physical description of the lands and coal seams that could become a mine; tract ranking, comparing all delineated tracts in a region; tract selection, determining how many and which highly ranked tracts should be sold to meet the regional leasing target; and sale scheduling, timing the sale of the selected tracts over the four-year sale cycle. The proposed rulemaking is different from the example rulemaking chiefly in the establishment of the role of the regional coal team as the central actor in this process.

The proposed rulemaking also requires the preparation of a "tract profile" in the tract delineation process (§ 3420.4-3(f)), to assist the team in tract ranking, selection and scheduling. Section 3420.4-4, which sets out the regional tract ranking, selection and scheduling procedures, has been expanded to discuss the formulation of *alternative* sales schedules as an integral part of this process. The process includes the preparation of a regional sale environmental statement that will formally discuss the results of the process and alternatives.

The example and proposed rulemakings differ significantly from the EMARS regulations in that the Department's call for expressions of leasing interest from coal companies, utilities and others is issued as the first step in the tract delineation process after land use planning is completed. In the EMARS process, this step preceded land use planning and was the driving force in determining what lands would be leased; in the preferred alternative, expressions of interest can be filed only for land already identified in the land use planning process as acceptable for further consideration for leasing.

In sections of § 3420.2 through 3420.2-7, 3420.3 through 3420.3-4 and 3420.4 through 3420.4-6 described above, the successive steps in the land use planning, leasing target setting and activity planning processes are designed to complement each other once the program, if adopted, is fully implemented. The latter two processes will continue on regular cycles, using areas found to be acceptable for further consideration for leasing in the on-going Bureau-wide land use planning effort.

If the program is adopted and if leasing is needed before the first four year regional lease sale schedules could be set using the full step-by-step process, the Department proposes these start-up considerations.

First, the land use planning section, expressly provides that an already completed land use plan (or management framework plan, under current Bureau usage), is an adequate basis for determining the acceptability of lands for further consideration for leasing, as long as it is formally supplemented by the application of the lands unsuitable and surface owner consultation screens set out in proposed § 3420.2-3. Thus the absence of final land use planning regulations under the proposed rulemaking for group 1600, or land use plans formally revised in conformity with those rules after they are final is not a bar to coal activity planning and the issuance of a coal lease, just as it has not been for coal or other resources—forge, timber, wilderness—since the enactment of the Federal Land Policy and Management Act in October 1976. Both the Federal Land Policy and Management Act, as well as the proposed land use planning regulations for each, specifically provide for continued use of existing land use plans for resource management decisionmaking until new plans under the proposed rulemakings are prepared.

Second, the initial regional leasing targets may be formulated on the basis of the analysis contained in the final environment statement on the Federal coal management program. If adopted, the proposed Subpart 3420 would provide that the regional leasing target provisions of §§ 3420.3 through 3420.3-4 would not be used in activity planning until after the Department of Energy issues the national coal production goals that are essential to activating the procedures for setting regional leasing targets and such procedures have been fully followed.

The formal State and Federal agency consultation provisions in section 3420.5 have been retained, even though another surface management agency will have indicated the acceptability of leasing in its land use planning process for the potential tract, and even though the States will have been involved in the process through the deliberations of the regional teams.

The provisions of §§ 3420.6 through 3420.6-3 are new since surface owner consent to lease has been required only since the enactment of the Surface Mining Control and Reclamation Act on August 3, 1977. The proposed rulemaking has been changed from the example rulemaking in order to incorporate the Under Secretary's ex-

pression of preference in an issue option memorandum of February 27, 1979, for the policy option of not scheduling for sale any tract on which written consent or evidence of such consent is not yet on record with the Bureau of Land Management. At the same time, § 3420.2-3(d)(2) has been added to allow the land use planner to consider changes in surface ownership or in the attitudes of qualified surface owners toward leasing.

Approximately 50 percent of the comments received on the example rulemaking were directed at the sections in Subpart 3420. Those comments ran from recommendations of support for actions taken in the example rulemaking to recommended changes to a large portion of the sections in Subpart 3420. Each of the comments was given careful consideration during the reexamination of the sections contained in Subpart 3420 and, where possible, were incorporated in the almost total rewrite and more orderly arrangement of Subpart 3420. The public is asked to review the new provisions of Subpart 3420 and to comment on the subpart.

Much of Subpart 3422 is derived from §§ 3525.2(e) and 3525.8 of existing regulations. The example rulemaking contained supplemental provisions dealing with the notice of sale and the bid evaluation after the sale. The example rulemaking also contained a listing of the information currently required by the Antitrust Division of the Department of Justice for its statutory review of lease issuance and readjustment. This listing had been used on the basis of an informal agreement with the Department of Justice. The Department of Justice has informally advised the Department of the Interior that it will change its reporting requirements. When the Department of the Interior receives any new or modified requirements, they will be substituted in § 3422.3-4.

The proposed rulemaking (§ 3422.1-1) changes the chronology of the sale process to provide that the public's views on fair market value and maximum economic recovery will be solicited as economic evaluation of the scheduled tracts begins, as well as after the Geological Survey makes its recommendation on these determinations to the Bureau of Land Management.

Three comments were received on the sections under Subpart 3422. Two comments questioned the bonus bid system with one comment focussing on the minimum bonus of \$25 contained in § 3422.1-2. The comment pointed out that a bonus of \$25 was not normally considered high, but in those cases where a 12½ percent royalty is mandated and where the Department, for the purposes of conserva-

tion, wishes to encourage maximum recovery of marginal value coal during ongoing mining, it might be too high. Even though this section has not been changed in the proposed rulemaking, a task force is currently considering the bonus bid and the establishment of a minimum bonus for future policy.

One comment received on § 3422.4 suggested that the section be altered to provide that the collection of receipts be accelerated to a maximum level so that cash management practices are observed. The section has not been changed to incorporate the comments offered. However, every effort will be made by the Bureau of Land Management to see that cash management practices are maximized.

Subpart 3425 contains the emergency leasing procedures. The Department of the Interior has had "short-term" or emergency leasing criteria ever since the imposition of the leasing "moratorium", with the first short-term standards in February 1973. The existing regulations contain a short-term need exception (43 CFR 3525.1(b)(2)) but do not specify criteria. Presently, the Department is conducting short-term lease sales at a rate of approximately two a month under criteria set forth in the modified court order in *NRDC v. Hughes*. The example rulemaking specified the conditions under which the Department would sell a lease outside of the normal competitive leasing process. The proposed rulemaking carries forward the example rulemaking criteria (which are similar to those in the modified court order in *NRDC v. Hughes*) with these following changes. (1) The proposed rulemaking sets a limitation on the number of years of reserves that can be leased to an existing operation. This is designed to avoid compromising the competitive leasing under the coal management program by meeting leasing targets only through issuance of leased to existing operators. The limit is designed so that future needs of the same existing operation should be able to be met through future cycles of the general competitive leasing process. (2) The proposed rulemaking establishes a "hardship" category much like the listed lease applications in the *NRDC v. Hughes* order, that will allow leasing that would lead to the opening of a new mine or expansion of an existing mine, with safeguards for the integrity of the general competitive leasing process. The Department recognized that there are urgent needs for Federal coal in cases where an existing operation is not about to shut down, as well as where one is about to close.

Apart from preference right leases, emergency leases are the only leases that will be issued in response to applications. The Department solicits com-

ments on these emergency leasing criteria to assist in the determination of whether legitimate needs for Federal coal may go unanswered under these criteria, or conversely, whether these criteria threaten the integrity of the general competitive leasing process.

The one comment received on Subpart 3425 of the example rulemaking was concerned that the "short-term", limited reserve, piecemeal leasing concept provided for in the example rulemaking would produce extremely small reserve blocks and thus create unnecessary difficulties for underground mines. The subpart has been rewritten and is new in its concept. The comment was given full consideration during the rewrite.

Subpart 3427 implements section 714 of the Surface Mining Control and Reclamation Act, and sets out when and how the Department of the Interior will determine whether split estate lands are acceptable for further consideration for leasing, are acceptable for tract ranking, but not scheduling, or are acceptable for lease sale. The provisions of Subpart 3427 were new in the example rulemaking and are carried forward to the proposed rulemaking with these changes: (1) The rulemaking now provides for a qualified surface owner to submit a "refusal to consent" that will result in the Department dropping coal underlying the covered surface from consideration for leasing for surface mining in activity planning whenever it is filed; and (2) the rulemaking deletes the exception formerly in § 3427.2 that allowed the Department to offer a tract for sale in certain circumstances even though written consent had not yet been given by the qualified surface owner. These changes are derived from the Under Secretary's expressions of preference for policy options in an issue option memorandum dated February 27, 1979.

With respect to the first of these issues, the rulemaking now proposes in § 3427.4 that a refusal of consent may be filed with the Bureau of Land Management at any time during activity planning and that the tract involved will be promptly eliminated from further activity planning for the life of the land use plan. In the February 27, 1979, memorandum, a second issue option was put forward to permit a qualified surface owner to disclose during the surface owner consultation screening process in land use planning that the owner has the firm intent not to provide consent to mine by other than underground methods during the life of the plan. Upon such a disclosure, that surface owner's land would be identified in the land use plan as land unsuitable for coal development by other than underground mining methods. The Under Secretary chose

to defer a decision on this issue option, but to include it in the proposed rulemaking with a specific request for public comment. The Department solicits comments particularly on this firm intent disclosure procedure but also more generally on the procedures and policies set forth in this rulemaking for both surface owner consultation and surface owner consent acquisition.

In the preferred alternative that this proposed rulemaking implements, the Secretary chose to allow consents to be acquired only by private parties, not by the Bureau of Land Management. The Department also solicits comments on whether the Bureau of Land Management should negotiate consents from those qualified surface owners who seek to consent under any specific terms and have the coal deposits underlying their surface considered for leasing, but who do not wish to negotiate the terms of consent with any specific company.

Six comments were received on Subpart 3427. These comments were directed at the example rulemaking which has been substantially rewritten in the proposed rulemaking. A couple of the comments suggested that the proposed rulemaking should contain provisions that would automatically exclude lands from leasing when consent to lease has not been obtained from the surface owner. This suggestion was not adopted. The proposed rulemaking goes even further and now provides for refusals of consent on lands. A refusal to consent eliminates the lands from all consideration in the leasing process during the life of a land use plan. The proposed rulemaking has dropped the provision of the example rulemaking that allowed a State Director of the Bureau of Land Management to publish a notice of lease sale for split-estate land where the surface is owned by a qualified surface owner and conduct that sale even though no consent has been provided by the owner. This change was suggested in three comments received on the example rulemaking.

Subpart 3430 reflects wording found in Subpart 3521 of existing regulations, especially the procedures and standards for filing and adjudicating preference right lease applications that were issued prior to May 7, 1976 (41 FR 18848). The existing regulations were carried forward into the example rulemaking with only two significant changes: (1) specific provisions on the relationship of lease right adjudication and possible exchanges were added; and (2) a land use plan must be completed on the lands in the lease application. This will assure the application of the unsuitability criteria to preference right lease applications in manner consistent with land use plan-

ning on other lands. This latter requirement for land-use planning was an element in prior practice, but it was not made explicit in the prior regulations.

The example rulemaking provisions are carried into the proposed rulemaking with the addition of a provision (§ 3420.2-1(d)) incorporating the requirements that a complete application include a certified abstract of title for the purpose of determining whether the lands were "unclaimed and undeveloped" at the time a prospecting permit was issued prior to its amendment in 1976. This is necessary for consistency with the provisions of section 2(b) of the Mineral Leasing Act. See Solicitor's Opinion M-36893, 84 I.D. 442 (1977).

The Department of the Interior solicits comments from industry and the public on whether preference right lease application reserve data should be maintained as confidential after lease issuance, since: (a) The reserve calculations are essential to determining commercial quantities, a process that will include public participation in land use planning and the environmental assessment processes under the National Environmental Policy Act of 1969; (b) the lease reserves must be calculated for the purpose of establishing the lessee's diligence requirements under the existing diligence regulations; and (c) Congress has provided that reserve data or exploration licenses be made public upon lease issuance.

Section 3430.2-2 of the example rulemaking was amended by the deletion of subsections (a) and (c). The time provided for filing an initial showing in response to the May 1976 regulations has passed, and any supplemental information showing how the applicant will comply with the reclamation requirements of the Office of Surface Mining Reclamation and Enforcement regulations can be submitted with the final showing, if necessary. The same is true of the abstracts of title needed to show that the permit lands were "unclaimed or undeveloped"—all abstracts are already filed except for those of applicants to whom specific extensions of time were granted. The extension periods with respect to the initial showing thus did not need to be carried forward from the existing regulations in Subpart 3521.

A total of ten comments were received on the various sections of subpart 3430 of the example rulemaking. All of the comments were considered during the decision process that led to the rewrite of the subpart in the proposed rulemaking. Some of the suggestions made in the comments were adopted as part of the rewrite. A number of the comments which were

not adopted were directed at what was claimed to be a change in the rights granted by a prospecting permit and the requirements that had to be met. The proposed rulemaking and its requirements relating to preference right lease applications is consistent with the various Acts of the Congress on the subject. A review of the Mineral Leasing Act of 1920 showed that it was the intent of Congress that the commercial quantities test applicable to preference right lease applications incorporate the standards of the prudent man test applicable under the Mining Law of 1872. It was found that, in the past, prospecting permits were issued too readily, resulting in vast areas being leased under preference right lease applications, but little or no mining being done. The proposed rulemaking is designed to create a coal management program that will cause diligent development of mining on leased lands.

Subpart 3431, which provides for the sale of coal to be taken in the exercise of a right-of-way granted across, through or under Federal lands, was now in the example rulemaking because the authority to dispose of coal in such a manner was not part of the law until enacted in October 1978. The provisions have not been significantly changed for their inclusion in the proposed rulemaking. No comments were received on this subpart of the example rulemaking.

The Department of the Interior solicits comments from those persons whose plans for the development of other Federal or non-Federal coal have been previously frustrated by the absence of this authority on whether the provisions of the proposed rulemaking will successfully implement the new authority.

The coal lease modification provisions of subpart 3432 were taken from existing regulations (43 CFR 3524.2-1) and expanded in drafting the example rulemaking to reflect the amendments in the Act of October 30, 1978 (Pub. L. 95-554) to the authority to make modification less burdensome on existing lessees.

A modified lease under the new authority is not subject to the increased minimum royalty and the new diligence requirements mandated by the Federal Coal Leasing Amendments Act. The example rulemaking also spelled out more precisely when non-competitive "leasing by modification" could occur and when a tract would only be leased under the provisions of Part 3420.

The modification sections were moved from the part of the example rulemaking covering "management of existing leases" to the part of the proposed rulemaking covering "noncompetitive leasing" to reflect their func-

tion and potential significance as a system for leasing small tracts of Federal coal. No comments were received on these provisions of the example rulemaking.

The provisions of Subpart 3435 carry forward the existing regulations issued in December 1977 for the exchange of lease interests as they relate to the relinquishment of coal leases of preference right lease applications in an exchange. Comparable non-coal mineral lease exchange regulations will remain in the group 3500 regulations when they are rewritten. The proposed rulemaking is not significantly different from the example rulemaking. The proposed rulemaking thus carries forward the requirement that a preference right lease applicant must demonstrate the discovery of commercial quantities of coal on the applied for lands before an exchange involving those lands can be consummated (43 CFR 3425.2(a)). The proposed rulemaking carries forward the policy enunciated by the Department of the Interior in hearings on S. 3189, the generic coal leasing exchange authority legislation, in the 95th Congress that the Department would not seek authority to consummate an exchange in any case where the constraints of the Surface Mining Control and Reclamation Act could lawfully be applied to prevent environmentally unsatisfactory mining from occurring.

The proposed rulemaking was changed in one important respect from the example rulemaking in order to conform to the intent of Congress in the exchange of mineral leases and coal lands. Coal lease exchanges in alluvial valley floors, fee land exchanges in alluvial valley floors, and the special lease exchanges authorized by the Act of October 30, 1978 (Pub. L. 95-554), all are required to be equal value exchanges. Subpart 3435 in the example rulemaking, however, consistent with the provisions of the December 1977 regulations, from which it was derived, only required that the value of the exchange tracts be "comparable". Section 3435.3-3 of the proposed rulemaking requires that equal values be exchanged in any action under the subpart.

Comments were received from two different sources on this subpart of the example rulemaking. One of the comments raised a number of questions about the exchange procedure as it was presented in the example rulemaking and an effort was made in the rewrite of the subpart for the proposed rulemaking to address each of those questions. The other comment was directed at what perceived as unnecessary burdens placed on a lessee that is party to an exchange. These points were considered in the rewrite

but little or no change was made in the proposed regulations.

Subpart 3436 of the proposed rulemaking implements the alluvial valley floor lease exchange authority contained in the Surface Mining Control and Reclamation Act. This provision appeared for the first time in the example rulemaking. The subpart incorporates the principles and procedures outline in Subpart 3435 of the proposed rulemaking to the extent applicable. No significant changes were made between the language of the example rulemaking and that of the proposed rulemaking.

One comment was received on this subpart of the example rulemaking. The comment raised a number of concerns about the procedures that will be followed in making exchanges under the provisions of the subpart. Detailed procedures will be developed when the manual sections for the subpart are prepared following the issuance of final rulemaking on a coal management program. All of the concerns are in areas that will be closely examined in developing the program procedures.

Subpart 3437, which is designed to implement partially the alluvial valley floor land exchange authority (private lands for Federal lands, with no lease interest involved) contained in the Surface Mining Control and Reclamation Act, was new language in the example rulemaking. The example rulemaking only made cross-reference to Group 2200 of existing regulations in Title 43, those that would be used to implement section 206, the general exchange authority of the Federal Land Policy and Management Act. The proposed rulemaking establishes criteria under which the Department of the Interior will determine which exchanges of potential alluvial valley floor private fee for federal fee the Department will, as an initial matter, consider consummating under the authority of section 206. These criteria are felt to be necessary since alluvial valley floor exchanges are by law to be carried out under section 206 of the Federal Land Policy and Management Act. Section 206 has no inherent limitations on when the Secretary may exchange lands in alluvial valley floors or elsewhere except for the requirements that the exchange be in the public interest, be for lands of equal value (with some cash equalization authorized), and be for lands in the same State. The same party that commented on Subpart 3436 commented on this subpart and again raised questions about the procedure to be followed in carrying out the subpart. As stated above, the procedure will be worked out in the Bureau of Land Management manual sections after the issuance of a final rulemaking.

Subpart 3440, which governs licenses to mine coal granted to persons or municipalities who supply coal only for domestic use, is derived from existing regulations (43 CFR Part 3530). The language of the example rulemaking has not been significantly changed in the proposed rulemaking. The Department of the Interior solicits comments about whether this little-used authority remains worthwhile and useful, or whether it is no longer relevant to the economic and environmental protection considerations controlling coal mining today. No comments were received on this subpart of the example rulemaking.

Subpart 3450 provides the language that will govern readjustment of the terms and conditions of Federal coal leases. Over half of the existing Federal coal leases will be subject to adjustment by 1986, and this is the time when the economic and other terms of each lease can be changed.

The example rulemaking expanded on the provisions of § 3522.2-1(b) of existing regulations, the existing readjustment provisions, to express more precisely both the procedures and the substance of lease readjustment, including consultation with the Attorney General with respect to the anti-trust impacts of lease continuation under the proposed readjustment terms. The proposed rulemaking does not differ significantly from the example rulemaking.

Two comments were received on this subpart of the example rulemaking. One comment stated that the subpart provisions had the effect of changing agreed-on lease terms and impacted existing property rights and should be changed. The agreed-on terms of each lease provide for such readjustments, and Congress has required that each lease contain such a term. The second comment felt that a time limitation should be imposed on lease readjustments. This comment was partially adopted in changes to the proposed rulemaking by section 3451 which provides that, for leases which become subject to readjustment after 1980, the Bureau of Land Management's failure to notify the lessee that readjustment will occur will signify a waiver of the Bureau's right to readjust.

Subpart 3452 governs how Federal coal leases are closed out, whether at the initiative of the lessee or the United States. The language of the proposed rulemaking is carried forward from Subpart 3523 of the existing regulations without significant change. No comments were received on this portion of the example rulemaking.

Subpart 3452 is derived from the coal-related provisions of the existing regulations in Subpart 3506, "Assign-

ments or Transfers and Subleases." The example rulemaking made no substantive changes in the language of the existing regulations. The proposed rulemaking, however, did make changes: (1) Revising the use of the word "transfers" to embrace all changes in ownership interests in Federal leases, whether designated assignments, subleases or whatever by the parties, thus simplifying the provisions; and (2) setting out clearly in checklist form the requirements for approval and causes for disapproval of any transfer of an interest in a Federal lease.

The Department of the Interior is presently examining its authority to condition approval of transfers of interests in coal leases on the submission of or agreement to specific development plans by the transferee, or to changes in the diligence provisions of the lease designed to assure that lease transfers are not serving solely speculative ends. If greater authority than that which is currently exercised exists, the Department will consider adding to this proposed rulemaking provisions relating to conditioning approval of transfers on specific development plans, such as the suspension of oil and gas leases are being conditioned under current Departmental policy. No public comments were received on this subpart of the example rulemaking.

Subpart 3461 of the proposed rulemaking sets out the content and procedures for the elements of the Federal lands review the Congress directed the Secretary to conduct in section 522(b) of the Surface Mining Control and Reclamation Act, and which the Bureau of Land Management, either by itself or through cooperative agreement with other surface management agencies, has been entrusted to carry out. As the Surface Mining Control and Reclamation Act was passed after the last regulatory revisions of the coal program, these provisions were developed for the example rulemaking. Several important changes have been made from the example regulations in the language of the proposed rulemaking.

First, the unsuitability criteria have been structured more precisely to spell out the exemptions to each criterion. Second, the provisions governing the application of the criteria to operations on existing leases (43 CFR 3461.1-2) have been expanded and clarified.

Most important, the proposed rulemaking clarifies the division of responsibility for the administration of the Surface Mining Control and Reclamation Act within the Department of the Interior by clearly distinguishing between the unsuitability assessments carried out by the Bureau of Land

Management through its land use planning process and unsuitability designations carried out by the Office of Surface Mining Reclamation and Enforcement in response to petitions to formally designate (or to terminate designation of) Federal lands as unsuitable for all or certain types of surface coal mining operations (43 CFR 3461.1-3 and 3461-4). After making its assessment as part of the lands review, the Bureau of Land Management might: (a) Condition any leasing to require that operations be conducted in a manner consistent with the land use plan; (b) withdraw the Federal lands assessed as unsuitable; or (c) itself petition the Office of Surface Mining Reclamation and Enforcement to formally designate the lands as unsuitable.

The proposed rulemaking does not change the Department of the Interior's intention to make unsuitability assessments in the land use planning process (43 CFR 3420.2), a screening provision to be applied in determining what Federal lands are acceptable for further consideration for leasing.

An individual offered comments on this subpart of the example rulemaking during one of the field hearings. The comments were directed at what was perceived as a lack of guidance to Bureau of Land Management managers in preparing land use plans. This instruction will be provided by the proposed Group 1600 rulemaking that is now under review and by other policy guidance, rather than in this rulemaking. The same individual also raised questions about the designation of areas of critical environmental concern. These designations will be handled under guidelines now under development in the Bureau of Land Management and not in this rulemaking.

Six written comments were received on this subpart of the example rulemaking. One comment stated that industry nominations should be called for immediately after an area is determined unsuitable for mining. This suggestion was not adopted because industry is expected to participate fully in the land use planning process at each stage when an opportunity for public participation is provided. A second comment wanted a clarification of the exemption from unsuitability criteria for lands on which surface mining operations were being conducted on August 3, 1977, or where substantial financial and legal commitments to the operations had been made prior to January 4, 1977. The exemption is required under section 522(a)(6) of the Surface Mining Control and Reclamation Act and is adequately covered in the proposed rulemaking. In addition, the definition section of the rulemaking defines "substantial financial or legal commit-

ment". Another comment raised questions about the applicability of the unsuitability criteria to existing leases. The criteria will be applied to existing leases during the land use planning process or when the mining plan is submitted, whichever comes first. The provisions of the Surface Mining Control and Reclamation Act authorize the application of the unsuitability criteria to existing leases.

One comment wanted Indian tribes to be included in the unsuitability criteria application process. The unsuitability criteria are applicable to Federal lands, which specifically excludes Indian lands. Indian tribes can submit their views on the application of unsuitability criteria to the Federal lands during the land use planning process. One comment raised two points, first, that the placing of the unsuitability criteria in the regulations rather than in manual sections or policy guidance documents might deny flexibility needed in certain cases, and second, that there seems to be little purpose to including lands determined to be unsuitable for mining within applications for exploration licenses. No changes have been adopted in response to the issues raised by this comment because, first, the criteria have been determined to be needed part of the rulemaking, and second, exploration could be useful for determining underground mining data. The final comment received indicated that the procedures for documenting exceptions in the example rulemaking do not appear to mesh with the Bureau of Land Management's present efforts to field test and incorporate the proposed unsuitability criteria into the land use planning system. The steps outlined in the FEDERAL REGISTER notice mentioned in the comment are only interim guidance for approved, ongoing land use plans. Future land use plans will be covered by later guidance in separate instructions.

The only changes to the wording of the specific criteria in this proposed rulemaking over the wording of those published in the example rulemaking were made to correct the criteria for conflicts with existing statutes and to improve their clarity. As noted above, the criteria as they appeared in the draft programmatic environmental statement are now being field tested. Changes suggested in comments received on the draft environmental statement and the example rulemaking will not be considered until results of the field testing have been assessed. This is expected to occur sometime during April, 1979. All comments will be considered prior to the issuance of the final rulemaking. If a proposed program is adopted and leasing resumes, the land use plans in the field

test areas will be conformed to all revised criteria before leasing begins.

The provisions of Subpart 3465 of the proposed rulemaking generally govern environmental protection during operations on leases and licenses to mine. The example rulemaking was derived from Subpart 3041 of existing regulations, but was substantially reduced by the transfer of many of the surface management functions to the Office of Surface Mining Reclamation and Enforcement as a result of the passage of the Surface Mining Control and Reclamation Act. The example and proposed rulemaking reflect that transfer of functions.

Five comments were received from the public on this subpart of the example rulemaking. The first comment wanted to include language that would require compliance with the regulations of another Federal agency. This recommendation was incorporated in the proposed rulemaking. The other comments were aimed at changes that would bring the rulemaking more under the control of the environmental assessment process. The proposed rulemaking complies with the requirements of the National Environmental Policy Act and the environmental requirements of the Surface Mining Control and Reclamation Act. No changes were adopted as a result of the review of these four comments.

Part 3470 contains the technical requirements of the coal management program, with Subpart 3471 setting out the requirements for land description in leases, what happens if the surface of the leased land is conveyed by the United States while the coal is under lease, and what protection is afforded bona fide purchasers of leases that are subject to cancellation or forfeiture. The language of this subpart is derived from §§ 3501.1-2, 3501.1-3, 3501.2-4, 3501.3-2(b)(2), 3501.3-3 and 3502.1-2 of existing regulations of title 43. Several insignificant changes in the language of the existing regulations were made in the proposed rulemaking. No comments were received on this subpart of the example rulemaking.

Subpart 3472 governs the qualifications to take or hold a coal lease. The language of the subpart is derived directly from Subpart 3502 of existing regulations with only slight modification. Two comments were received on this example subpart. One comment suggested that the acreage limitations imposed in the rulemaking were not needed. The limitations are established by the provisions of the Federal Coal Leasing Amendments Act of 1976 and have been retained in the proposed rulemaking. The other comment wanted to know if the restriction in the subpart pertaining to railroad holding companies holding leases ap-

plied to subsidiaries of a railroad. The limitation does not apply to a subsidiary of a railroad that is a legitimate mining company; such a company is authorized to hold a lease under the provisions of the Mineral Leasing Act.

The provisions of Subpart 3473 contain the financial terms of leases and the methods for getting them waived or reduced. The rulemaking language has been taken from Subpart 3503 of existing regulations. In the example rulemaking, the Department of the Interior raised the annual per acre lease rental. That increase, \$3 per acre per year, has been carried forward to the proposed rulemaking. The proposed rulemaking also prohibits the reduction of the production royalty on surface-mined coal below 12½ percent and on underground-mined coal below 5 percent. The example rulemaking restated the Secretary of the Interior's authority without limiting the scope of the Secretary's discretion to reduce royalties. These reduction limitations are not required by law; they are proposed as an exercise of discretion.

Subpart 3474 contains the bonding requirements for Federal leases and was derived from Subpart 3504 of existing regulations. The example rulemaking contained several notable changes from the existing provisions. The bond required by the Bureau of Land Management no longer covers reclamation; the Office of Surface Mining Reclamation and Enforcement has assumed that bonding function in connection with the issuance and supervision of permits to mine. In addition, there is no longer any authorization for a nationwide or statewide bond; each lease of a Federal portion of a logical mining unit must be separately bonded. Upon issuance of this rulemaking in final form, each lessee holding such a blanket coverage bond would be notified of this requirement.

The proposed rulemaking changes the example rulemaking to standardize the terms used with respect to bonding. The term "performance bond" been limited to reclamation obligations. The term "lease bond", which has had many different uses, has been dropped, and the Department uses the term "compliance bond" in the proposed rulemaking to mean the bond covering compliance with the financial and other non-reclamation lease obligations of the lessee. The Department solicits comments on difficulties, if any, that Federal lessees have had or may have in securing adequate bonds for these purposes.

Subpart 3475 contains the general lease term provisions on diligent development and continued operation obligations (diligence requirement) issued by the Department of the Interior in May 1976 to cover the existing leases, and those issued in December 1976 to

cover leases issued after the passage of the Federal Coal Leasing Amendments Acts of 1976. The rulemaking is carried forward from §§ 3500.0-5 and 3520.2-5 of existing regulations without substantive change, since the authority to promulgate regulations respecting diligence on Federal coal leases was transferred to the Department of Energy by the Act creating that Department. If and when the Department of Energy promulgates new or additional diligence requirements for Federal coal leases, these provisions will be amended to state or simply cross-reference the Department of Energy regulations. Provisions dealing with the administration of the diligence requirements, such as in § 3452.3-2(b) of existing regulations, will remain.

The only comment received on the provisions of Part 3470 was one questioning the diligence requirements of Subpart 3475. The comment was considered and not adopted.

The principal authors of this proposed rulemaking are Steven Quarles and Charles Rech of the Office of Coal Leasing, Planning and Coordination; Lawrence McBride, Office of the Solicitor; and Don Mitchell, Office of Coal Management, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management of the Bureau of Land Management.

It has been determined that the publication of this document is a major Federal action significantly affecting the quality of the human environment. A draft environmental statement was published on December 15, 1978, and a final environmental statement is now being prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

NOTE.—The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Mineral Leasing Act, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act and the Multiple Mineral Development Act, it is proposed to amend Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations by adding a new Group 3400 as set forth below:

GROUP 3400—COAL MANAGEMENT

PART 3400—COAL MANAGEMENT—GENERAL

Subpart 3400—Introduction—General

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

Subpart 3422—Lease Sales

Subpart 3425—Emergency Leasing

Subpart 3427—Split Estate Leasing

PART 3430—NONCOMPETITIVE LEASING

Subpart 3430—Preference Right Leases

Subpart 3431—Negotiated Sales—Rights-of-Way

Subpart 3432—Lease Modifications

Subpart 3435—Lease Exchange

Subpart 3436—Lease Exchange—Alluvial Valley Floors

Subpart 3437—Coal Exchange—Alluvial Valley Floors

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases—Readjustment of Lease Terms

Subpart 3452—Relinquishments, Cancellations, and Terminations

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Subpart 3465—Surface Management and Protection

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

Subpart 3472—Qualification Requirements

Subpart 3473—Fees, Rentals and Royalties

Subpart 3474—Bonds

Subpart 3475—Lease Terms

Group 3400—Coal Management

PART 3400—COAL MANAGEMENT—GENERAL

Subpart 3400—Introduction—General

Sec.

3400.0-3 Authority.

3400.0-4 Responsibilities.

3400.0-5 Definitions.

3400.1 Multiple development.

3400.2 Lands subject to leasing.

3400.3 Limited authority to lease.

3400.3-1 Consent or conditions of administering agency.

3400.3-2 Department of Defense lands.

3400.3-3 Department of Agriculture lands.

3400.3-4 Trust protection lands.

3400.4 Federal/State government cooperation.

AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

Subpart 3400—Introduction—General

§ 3400.0-3 Authority.

(a) These regulations are issued under the authority of:

(1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.).

(2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359).

(3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 et seq.).

(4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 et seq.).

(5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521-531).

(6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 et seq.).

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

§ 3400.0-4 Responsibilities.

(a) The Bureau of Land Management has the responsibility on Federal lands to:

(1) Determine the acceptability of lands for leasing and development, except as provided in subsection (c)(7) of this section;

(2) Issue, modify and readjust leases and serve as the Office of Record for transfers, relinquishments and similar transactions on leases;

(3) Ensure that fair market value is received for rights to extract Federal coal before issuing a lease;

(4) Issue and administer all use authorizations for facilities related to coal development on BLM administered lands outside the area of mining operations;

(5) Determine, in consultation with the Office of Surface Mining Reclamation and Enforcement, the appropriate post-mining land use of BLM administered lands on which surface coal mining operations will be conducted;

(6) Include terms in each lease to protect nonmineral resources and to ensure reclamation of mined lands to the applicable standards;

(7) Recommend judicial action to cancel leases for noncompliance with lease terms;

(8) Consult with other surface management agencies and surface owners when they are involved in or affected by coal management actions that are the primary responsibility of the Bureau of Land Management; and

(9) Adjudicate applications for, issue, and administer exploration licenses.

(b) The Geological Survey has the responsibility on Federal lands to:

(1) Supervise production and resource recovery in the area of mining operations;

(2) Make geologic, engineering, coal resource economic value, and maximum economic recovery determinations for the Department's leasing program;

(3) Review and concur with mining and exploration plans and amendments to plans to establish production and resource recovery requirements;

(4) Approve exploration plans and supervise exploration under an exploration license, and on a lease outside a permit area; and

(5) Deal with operators on the matters listed in paragraphs (a)(1) through (4) of this section.

(c) The Office of Surface Mining Reclamation and Enforcement has the responsibility on Federal lands to:

(1) Approve mining and reclamation permit applications;

(2) Ensure that mining operations are consistent with environmental criteria and reclamation plans;

(3) Monitor reclamation operations for compliance with plans;

(4) Deal with operators during mining operations on the matters listed in paragraph (c)(1) through (3) of this section;

(5) Ensure that the rights of holders of noncoal Federal leases and permits are protected in the permit approval process;

(6) Negotiate, in consultation with the Bureau of Land Management and Geological Survey, and recommend for Secretarial approval, cooperative agreements with the states to establish the authority of state regulatory agencies over Federal operations on a lease; and

(7) Designate lands, in response to petitions, as unsuitable for all or certain kinds of surface mining operations, reject petitions, and terminate designations of lands.

(d) The Fish and Wildlife Service has the responsibility on Federal lands to:

(1) Protect and conserve endangered and threatened species, migratory birds, eagles, and other fish and wildlife;

(2) Recommend lands unsuitable for leasing due to fish, wildlife, and related ecological values;

(3) Recommend tract ranking factors and weights, for fish and wildlife;

(4) Recommend lease stipulations related to fish and wildlife values;

(5) Review and recommend post mining land uses of surface mined lands as they relate to the creation or maintenance of fish and wildlife values;

(6) Review exploration, mining, and reclamation plans to make recommen-

dations about their potential impacts on fish and wildlife values; and

(7) Review water resource development projects and all other projects that will result in the impoundment, diversion or control of streams or other bodies of water, for the purposes of mitigating or avoiding adverse impacts on fish and wildlife values.

§ 3400.0-5 Definitions.

As used in this part:

(a) "Alluvial valley floor" means unconsolidated, stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. This definition does not encompass upland areas generally covered by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion; deposits laid down by unconcentrated runoff or slope wash, including talus; other mass movement accumulations; and windblown deposits.

(b) "Area of Mining Operation" means that area of non-Federal land and Federal land under lease or license to mine (within a logical mining unit) that (1) contains surface or underground excavations from which coal is extracted as part of a commercial venture, that is, one which has a historic production record or existing contractual production commitments or both; (2) contains support facilities that contribute directly to coal mining, preparation and handling; or (3) contains coal reserves intended for extraction in the course of the mining operation.

(c) "Authorized officer" means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(d) "Bonus" means that the value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership.

(e) "Bypass coal" means an isolated coal deposit that cannot, for the foreseeable future, be practically mined either separately as part of any logical mining unit other than that of the applicant for an emergency lease under the provisions of Subpart 3425 of this chapter.

(f) "Certificate of bidding rights" means a right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales.

(g) "Coal deposits" mean all Federally-owned coal deposits, except those held in trust for Indians.

(h) "Coal resource economic value (CREV)" means the value of the coal resource in a lease in its best operational and market application.

(i) "Commercial quantities" as used in paragraph (n) mean:

(1) For any lease issued after August 4, 1976, an amount of production equal to one percent of the LMU reserves per year; or

(2) For any lease issued before August 4, 1976, an amount of production equal to one-fortieth of the LMU reserves per year.

(j) "Compliance bond" means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations on a lease are conducted in conformity with the approved mining or exploration plan. This is the same as the "lease bond" referred to in 30 CFR 742.11(a).

(k) "Continued operation" means the production of coal equal to one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an annual average amount of one percent of the LMU reserves thereafter. The average annual amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(l) "Contiguous" means having at least one point in common, including cornering tracts.

(m) "Department" means the United States Department of the Interior.

(n) "Diligent development" means (1) for any lease issued after August 4, 1976, the timely preparation for and initiation of coal production from the LMU of which the lease is a part so that coal is actually produced in commercial quantities by the end of the tenth year from the effective date of the lease; or

(2) For any lease issued before August 4, 1976, the timely preparation for and initiation of coal production from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3475.4.

(o) "Exploration" means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above and below the deposits, the hydrologic conditions associated with the deposit, and any other information that may be used to prepare a coal resource evaluation of the land.

(p) "Exploration license" means a license issued by the authorized officer

to permit the licensee to explore for coal on Federal lands under terms and conditions that will protect the surface and subsurface resources and the environment, and provide for the reclamation of areas disturbed by such exploration.

(q) "Exploration plan" means a plan prepared in sufficient detail to show the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations under an exploration license.

(r) "Fair market value" means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(s) "Federal lands" mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including mineral estates or coal estates underlying private surface, excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(t) "Governmental entity" means a Federal or State agency or municipality or their subdivisions, including any corporation acting primarily as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

(u) "Grant of modifications" means the Secretary's approval to expand an existing lease to include additional coal lands or deposits contiguous to the existing lease.

(v) "Interest" in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending.

(w) "Intertract bidding competition" means a lease sale method where tracts containing more reserves in total than the Department intends to lease in that sale are offered for sale, and each bidder competes against other bidders on the same tract for which he bids and against bidders on the other tracts offered in the same sale.

(x) "Know Recoverable Coal Resource Area (KRCRA)" means an area determined by the Geological Survey, where data are believed to be sufficient to evaluate the extent, depth, quality, and potential for development of coal deposits that are technically recoverable based on past and current mining practices in the area. Boundaries for such an area show only the extent of recoverable coal deposits based on data available at the time of determination.

(y) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which authorizes the exploration for and extraction of coal. In provisions of this Group that refer to Federal leases for minerals other than coal, the term "Federal coal lease" may be used.

(z) "Licensee" means the holder of an exploration license.

(aa) "License to mine" means a license issued under the provisions of Part 3440 of this Chapter to a municipality or charitable organization to mine coal for domestic use.

(bb) "Logical Mining Unit (LMU)" means an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of one or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the date of first approval of a mining plan for that LMU. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(cc) "Logical Mining Unit reserves" mean the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries or whenever significant new information becomes available concerning the amount of such reserves.

(dd) "Maximum economic recovery (MER)" means the amount of coal that can be recovered by prudent mining practices from all seams that are collectively profitable to be mined on any tract evaluated for a lease sale at the time of the MER determination. Social and environmental costs

shall be considered in determining profitability.

(ee) "Mining method evaluation" means a written comparison of mining method alternatives used to determine maximum economic recovery.

(ff) "Mineral leasing laws" mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359).

(gg) "Mining plan" means a mining and reclamation operations plan that fully complies with the requirements of the Mineral Leasing Act of 1920 as amended, the Surface Mining Control and Reclamation Act of 1977, and all other applicable laws.

(hh) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or the District Mining Supervisor or a subordinate acting under the Supervisor's direction.

(ii) "Mining unit" means an area containing technically recoverable coal that will feasible support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(jj) "Operator" means a lessee, licensee or one conducting operations on a lease or exploration license under the authority of the lessee or licensee.

(kk) "Participate" means to have or take part or share with others in an exploration license.

(ll) "Permit" means the document issued, to authorized surface coal mining and reclamation operations on Federal lands either by the Director of the Office of Surface Mining Reclamation and Enforcement or, where a cooperative agreement pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1273) has been executed by the state regulatory authority (30 CFR Part 741), after approval of a mining plan by the Assistant Secretary, Energy and Minerals.

(mm) "Permit area" means the area, including all natural and human resources, included within the boundaries specified in a permit, whether or not the areas will be affected by surface coal mining and reclamation operations, which is designated on the approved maps submitted by the applicant with this permit application and which is covered by the performance bond required Part by CFR Parts 800-808.

(nn) "Public bodies" means Federal and state agencies, municipalities, rural electric cooperatives and similar organizations, and nonprofit corporations controlled by any such entities.

(oo) "Qualified surface owner" means the natural person or persons (or corporation, the majority stock of

which is held by a person or persons) who:

(1) Hold legal or equitable title to the land surface;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of (paragraphs (00) (1) and (2) of this section for a period at least 3 years prior to the granting of any consent to mining of their lands. In computing the three year period the authorized officer may include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this subsection.

(pp) "Reserves" means coal deposits which are economically feasible to extract.

(qq) "Secretary" means the Secretary of the Interior or his authorized representative.

(rr) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is, or shall be considered, a sole party in interest with respect to a lease or bid in which any other party has any interest.

(ss) "Split estate" means land in which the ownership of the surface is held by persons including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(tt) "Substantial legal and financial commitments" mean major investments of money in power plants, railroads, coal handling and storage facilities and other capital intensive improvements, and fixed equipment made on the basis of long-term, legally enforceable coal sales contracts. Investments are "major" if they are substantial in relationship to the aggregate capital expenditures which reasonable can be anticipated to be made for capital improvements and fixed equipment at the mine site up to and including completion of all reclamation operations. Costs of the acquisition of the coal in place or of the right to mine it do not alone constitute "substantial legal and financial commitments".

(uu) "Surface management agency" means the Federal agency with jurisdiction over the surface of Federally owned lands containing coal deposits.

(vv) "Surface Mining Office" means the field representative authorized to act for Director of the Office of Surface Mining, Reclamation and Enforcement.

(ww) "Surface mining operation" means activities conducted on the surface of the lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Reclamation and Environmental Act of 1977, 30 U.S.C. 1291(28).

(xx) "Written consent" means the document or documents that the surface owner has signed that: (1) Permit a coal operator to enter and commence surface mining of coal; (2) describe any financial considerations given or promised in return for the permission, including in-kind considerations; (3) described any considerations given in terms of type or method of operation or reclamation for the area; (4) contain any supplemental or related contracts between the surface owner and any other person party to the permission; and (5) contain a full and accurate description of the area covered by the permission.

§ 3400.1 Multiple Development.

The granting of the exploration license, a license to mine or a lease for the prospecting, development, or production of coal deposits will neither preclude the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor will it preclude the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

- (a) Lands in:
 - (1) The National Park System;
 - (2) The National Wildlife Refuge System;
 - (3) The National Wilderness Preservation System;
 - (4) The National System of Trails;
 - (5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic River Act;
 - (6) Incorporated cities, towns, and villages;
 - (7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and
 - (8) National Recreation Areas.
- (b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States;
- (c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property

pursuant to the provisions of the Surplus Property Act of 1944; and

(d) Lands acquired with money derived from the Land and Water Conservation Fund.

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of administering agency.

(a) Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits or holding a mortgage or deed of trust secured by such lands.

(b) Exploration licenses and licenses to mine for lands described in paragraph (a) of this section shall be subject to such conditions as that official may prescribe with respect to the use and protection of the nonmineral interests in the lands, but may be issued without the consent of that official.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

- (a) Produces electrical energy for sale to the public;
- (b) Is located in the state in which the leased lands are located; and
- (c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

(a) Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within a National Forest or a National Grassland, where:

(1) There are no significant recreational, timber, economic or other values which may be incompatible with the surface mining operations; and

(2) Either (i) the surface mining operations are incident to an underground coal mine; or (ii) the Secretary of Agriculture determines (on lands west of the 100th Meridian that do not have significant forest cover) that surface mining complies with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976, the National Forest Management Act of 1976, and the Surface Mining Control and Reclamation Act of 1977.

(b) The Secretary may not issue leases that would authorize surface mining operations on Federal lands

within the boundaries of the Custer National Forest. § 3400.3-4 Trust protection lands. The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3500.0-5(s). Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3400.4 Federal/State government cooperation.

(a) In order to implement the requirements of law for Federal-State cooperation in the management of Federal lands, a Department/State regional coal team shall be established for each coal region. The team shall consist of a Bureau of Land Management field representative for each State in the region, who will be the State Director, or, in his absence, his designated representative; the Governor of each State or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairman of the team. If the region is a multi-State region under the jurisdiction of one Bureau of Land Management State Office, the State Director shall designate a second representative.

(b) Each regional coal team shall consider and suggest policy for regional target setting, tract delineation, and site specific analysis in the coal production region, guide and review tract ranking, and conduct the selection and sale scheduling process in order to suggest regional lease sale alternatives to be analyzed in the regional lease sale environmental statement and to be recommended to the Secretary. Each team member may submit a lease sale schedule alternative which shall be treated equally in the draft and final regional lease sale environmental statement.

(c) Upon completion of the final regional lease sale environmental statement, the chairman shall submit the recommendations of the regional coal team to the Director. Any disagreement as to the recommendations among the team shall be documented and submitted by the chairman along with the team recommendation. The Director shall submit the final regional environmental statement to the Secretary for his decision, together with the recommendations of the team and any recommendations the Director may wish to make after review of the final statement.

(d) The regional coal team shall also serve as the general Department/State forum for all other major Department coal management program decisions in the region, concerning preference right lease applications,

public body and small business set-aside leasing, emergency lease, exchanges, and readjustment of lease terms and exploration licenses.

(e) Participation in the proceedings of a regional coal team need not be limited to the designated representatives of the Bureau of Land Management State Directors or the Governors. Additional representatives of State and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at different points in the process at the request of the team chairman. At a minimum, participation shall be solicited from State and Federal agencies with special expertise in topics considered by the team or with direct responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

- Sec.
- 3410.0-1 Purpose.
- 3410.0-2 Objective.
- 3410.0-3 Authority.
- 3410.0-4 Responsibilities.
- 3410.1 Exploration licenses—Generally.
- 3410.1-1 Lands subject to exploration licenses.
- 3410.1-2 When an exploration license is required.
- 3410.2 Prelicensing procedures.
- 3410.2-1 Application for an exploration license.
- 3410.2-2 Environmental review.
- 3410.2-3 Cultural resources.
- 3410.2-4 Threatened or endangered species.
- 3410.2-5 Surface management agency.
- 3410.2-6 Substantial disturbance to the natural land surface.
- 3410.3 Exploration licenses.
- 3410.3-1 Issuance and termination of an exploration license.
- 3410.3-2 Limitations on exploration licenses.
- 3410.3-3 Operating regulations.
- 3410.3-4 Surface protection and reclamation.
- 3410.3-5 Ground and surface water data.
- 3410.3-6 Bonds.
- 3410.4 Use of data.
- 3410.5 Use of surface.

AUTHORITY: 30 U.S.C. 181 et seq.

Subpart 3410—Exploration Licenses.

§ 3410.0-1 Purpose.

This subpart provides for the issuance of licenses to explore for coal deposits subject to disposal under Group 3400.

§ 3410.0-2 Objective.

The objective of this subpart is to allow private parties singularly or

jointly to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits.

§ 3410.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this Group, principally section 30 of the Mineral Leasing Act of 1920 (30 U.S.C. 189).

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(b)).

§ 3410.0-4 Responsibilities.

(a) The Bureau of Land Management exercises the Secretary's discretionary authority to determine whether exploration licenses are to be issued. The Bureau is also responsible for issuing and cancelling exploration licenses and terminating the period of liability of the licensee under any bond he may have posted as a condition of license issuance. The regulations in this Subpart shall be administered by the Director of the Bureau of Land Management through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821) is also the Office of Record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area covered by the license, including responsibility for all geological, economic, and engineering determinations.

(c) The authorized officer, in consultation with the Geological Survey, and where appropriate, the surface management agency, the Fish and Wildlife Service, and the surface owner, if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources and for reclamation.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, shall provide technical review and approval of the exploration plan. The Geological Survey shall recommend bonding requirements to the Bureau of Land Management. Upon the completion of exploration operations, the Geological Survey shall recommend termination of the period of the licensee's liability under any bond posted.

§ 3410.1 Exploration licenses—Generally.

§ 3410.1-1 Lands subject to exploration licenses.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary that are subject to leasing, § 3400.2;

(2) Lands administered by the Secretary of Agriculture through the Forest Service or other agency that are subject to leasing, § 3400.2;

(3) Coal deposits in lands which have been conveyed by the United States subject to a reservation to the United States of the mineral or coal deposits, to the extent that those deposits are subject to leasing under § 3400.2; and

(4) Coal or lignite deposits in acquired lands set apart for military or naval purposes.

(b) No exploration license shall be issued for land on which a lease has already been issued.

§ 3410.1-2 When an exploration license is required.

(a) An exploration license shall not be required for "casual use" as defined in 30 CFR 211.10(a).

(b) No person may conduct exploration activities for commercial purposes on lands subject to this subpart without an exploration license.

(c) Exploration activities conducted without an exploration license in violation of paragraph (b) of this section shall constitute a trespass, and shall be subject to the provisions of 43 CFR 9239.5-3(f).

§ 3410.2 Prelicensing procedures.

§ 3410.2-1 Application for an exploration license.

(a) Exploration license applications shall be submitted at the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (43 CFR Subpart 1821). The applications shall be subject to the following requirements:

(1) No specified form of application is required.

(2) The area to be explored shall be described by legal description or, if on unsurveyed lands, by metes and bounds.

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10(a).

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (43 CFR 3473.2).

(5) Coal exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one State. Applications for more than 25,000 acres must include a justifica-

tion for an exception to the normal acreage limitation.

(b) Any person qualified to hold a lease under the provisions in Subpart 3472 of this chapter may apply for an exploration license.

(c) Nothing in this Subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in exploration licenses for a given area.

(d) Applicants for exploration licenses shall be required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis.

(1) Immediately upon the filing of an application for an exploration license the applicant shall publish a "Notice of Invitation," approved by the authorized officer, once every week for four consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice shall contain an invitation to the public to participate in the exploration under the license. Copies of the Notice of Invitation shall be filed with the authorized officer two weeks prior to publication by the applicant, for posting in the proper Bureau of Land Management Office and for Bureau of Land Management's publication of the Notice of Invitation in the FEDERAL REGISTER.

(2) Any person who elects to participate in the exploration program contained in the application shall notify the authorized officer and the applicant in writing within 30 days after the final publication. Any person who seeks to participate in the exploration program, but who wants the exploration program modified in any respect shall submit, with his notification to the authorized officer, three copies of an exploration plan that complies with the requirements of 30 CFR 211.10(a), showing the modifications that would be required in the exploration plan in which he seeks to participate. The authorized officer may require modification of the original exploration plan to accommodate the needs of additional participants.

(e) An application to conduct exploration which could have been conducted as a part of exploration under an existing or recent coal exploration license may be rejected.

§ 3410.2-2 Environmental review.

(a) Before an exploration license may be issued, the authorized officer, using the exploration plan submitted by the applicant, as approved by the Geological Survey, shall make an assessment of the potential effect of such exploration on the area and its environment. Aspects of the environment to be examined include surface water and groundwater; fish and other

aquatic resources; wildlife habitats and populations; visual resources; recreational resources; cultural resources; and social factors in the affected area.

(b) If, before issuance of the license, the authorized officer determines that an environmental statement is required by Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), a statement shall be prepared.

§ 3410.2-3 Cultural resources.

If lands in or nominated for inclusion in the National Register of Historic Places contain cultural resources which might be affected by an action taken under an exploration license, no exploration license for such land shall be authorized until after compliance with section 106 of the Historic Preservation Act (16 U.S.C. 470f). Other cultural resource values shall also be protected pursuant to Section 105 of the Historic Preservation Act.

§ 3410.2-4 Threatened or endangered species.

If threatened or endangered species of fauna or flora or their critical habitat would be destroyed or adversely modified as a result of the issuance of an exploration license, no exploration license for such lands shall be authorized. In making this determination the authorized officer shall consult any other surface management agency, and if the presence of threatened or endangered species or their habitat is suspected or known, with the Fish and Wildlife Service in accordance with 50 CFR Part 402.

§ 3410.2-5 Surface management agency.

The authorized officer may issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only in accordance with those conditions prescribed by the surface management agency concerning the use and protection of the nonmineral interests in those lands.

§ 3410.2-6 Substantial disturbance to the natural land surface.

No exploration license shall be issued if exploration under it would result in substantial disturbance to the natural land surface. Substantial disturbance to the natural land surface means any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quality and hydrologic conditions of the coal deposit, or which causes unnecessary and undue degradation of the lands.

§ 3410.3 Exploration licenses.

§ 3410.3-1 Issuance and termination of an exploration license.

(a) The authorized officer has the discretion of issuing an exploration license or rejecting the application therefor under this subpart.

(b) An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. An exploration license shall not be valid for more than two years from its effective date. Cleanup and reclamation must be completed during this period.

(c) An exploration plan approved by Geological Survey shall be attached and made a part of each exploration license issued.

(d) Subject to the continued obligation of the licensee and the surety company to comply with the terms and conditions and special stipulations of the exploration license, the exploration plan, and the regulations, a licensee may relinquish an exploration license for all or any portion of the lands in it. A relinquishment shall be filed in the Bureau of Land Management State Office in which the original application was filed. See 43 CFR Subpart 1821.

(e) An exploration license may be revoked by the authorized officer for noncompliance with its terms, the exploration plan, or the regulations, after the authorized officer has notified the licensee of the violation(s) in writing and the licensee has failed to correct the violation(s) within the period prescribed in the notice.

(f) Should a licensee request a modification to the exploration plan, the Mining Supervisor, with the concurrence of the authorized officer, and where appropriate the surface management agency, may approve the modification if geologic or other conditions warrant. If modification of the exploration plan could result in significant disturbance or damage, the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the license to mitigate such disturbance or damage. Unless the licensee concurs in the adjusted terms and conditions of the license, the modification of the exploration plan will not be approved.

(g) When unforeseen conditions that could result in significant disturbances or damage to the environment are encountered, or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust

the terms and conditions of the exploration license, or (2) the Mining Supervisor, after consultation with the authorized officer and where appropriate, the surface management agency, may direct adjustment in the exploration plan. If the licensee does not concur in the adjustment of the terms of the exploration license and exploration plan, he may relinquish the exploration license.

(h) Exploration licenses shall not be extended. Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in § 3410.3-1. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

§ 3410.3-2 Limitations on exploration licenses.

(a) The issuance of exploration licenses for an area shall not preclude the issuance of leases under applicable regulations for that area. If a lease is issued for lands included in an exploration license, the authorized officer shall cancel the exploration license on the effective date of the lease for those lands which are common to both.

§ 3410.3-3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. Authorized representatives of the Secretary and, where appropriate, any surface management agency shall be permitted to inspect the premises and operations. The licensee shall provide for the free ingress and egress of Government officers and other persons using the lands under authority of the United States.

§ 3410.3-4 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the land disturbed by exploration.

(b) The exploration plan shall be designed to prevent substantial disturbance of the natural land surface.

(c) The authorized officer may issue an exploration license for Federal lands underlying private surface. The establishment of the bond amount, when the exploration license will embrace such lands, shall reflect any agreement or lack of agreement between the license applicant and the surface owner with respect to consent to or compensation for operations on

the surface of the lands in the exploration license.

§ 3410.3-5 Ground and surface water data.

The applicant may be required to collect and report ground and surface water data to the authorized officer.

§ 3410.3-6 Bonds.

(a) Bonding provisions in Subpart 3474 of this chapter apply to these regulations.

(b) Prior to issuing an exploration license, the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency and the surface owner, shall insure that the amount of the bond or bonds to be furnished is sufficient to assure compliance with the terms and conditions of the exploration license, exploration plan and regulations. In no event shall the amount of such bond be less than \$5,000.

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer shall terminate the period of liability of the compliance bond. Where the surface of the land being explored is privately owned, the authorized officer shall not terminate the period of liability under the compliance bond until each surface owner has notified the authorized officer, in writing, that the surface has been reclaimed in a satisfactory manner. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer shall make the final determination. The period of liability under the compliance bond shall be terminated after it is determined that the terms and conditions and special stipulations of the exploration license, the exploration plan, and the regulations have been met.

§ 3410.4 Use of data.

The licensee shall furnish to the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this subpart, the license, or the plan. All proprietary data shall be considered confi-

dential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6; 43 CFR 2.20).

§ 3410.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only that surface area of the lands in the exploration license that is authorized in the exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations authorized, under any other Act or regulation.

(c) The licensee shall comply with all applicable Federal, State and local laws and regulations, including the regulations in Group 3000 and Part 3460 of this chapter, and 30 CFR Parts 211 and 741.

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

- Sec.
- 3420.0-1 Purpose.
 - 3420.0-2 Objectives.
 - 3420.0-3 Authority.
 - 3420.0-6 Policy.
 - 3420.1 Procedures.
 - 3420.1-1 General.
 - 3420.1-2 Lands subject to evaluation for leasing.
 - 3420.1-3 Known Recoverable Coal Resource Areas.
 - 3420.1-4 Special leasing opportunities.
 - 3420.1-5 Requirement for land use planning.
 - 3420.2 Land use plans prepared by the Bureau of Land Management.
 - 3420.2-1 Preparation of a land use plan.
 - 3420.2-2 Coal resource information.
 - 3420.2-3 Areas acceptable for further consideration for leasing.
 - 3420.2-4 Hearing requirements.
 - 3420.2-5 Consultation with Federal surface management agencies.
 - 3420.2-6 Consultation with states.
 - 3420.2-7 Identification of lands as acceptable for further consideration.
 - 3420.3 Regional production goals and targets.
 - 3420.3-1 General.
 - 3420.3-2 Evaluation of coal needs.
 - 3420.3-3 Use of final regional leasing targets.
 - 3420.3-4 Environmental assessment.
 - 3420.4 Activity Planning—The leasing process.
 - 3420.4-1 Area identification process.
 - 3420.4-2 Expressions of leasing interest.
 - 3420.4-3 Preliminary tract delineation.
 - 3420.4-4 Regional tract ranking, selection, and scheduling.
 - 3420.4-5 Environmental assessment.
 - 3420.4-6 Public meetings on proposed tracts.
 - 3420.5 Final consultations.
 - 3420.5-1 Timing of consultation.
 - 3420.5-2 Consultation with surface management agencies.
 - 3420.5-3 Consultation with Governors.
 - 3420.6 Qualified surface owner consent considerations.

- 3420.6-1 Receipt of written consent.
- 3420.6-2 Announcement of tracts under consideration.
- 3420.6-3 Consideration of consents.
- 3420.7 Adoption of final regional lease sale schedule.
- 3420.7-1 Announcement.
- 3420.7-2 Revision.

Subpart 3422—Lease Sales

- 3422.1 Economic evaluation.
- 3422.1-1 Mineral evaluation and initial comments on fair market value and maximum economic recovery.
- 3422.1-2 Estimated fair market value determination.
- 3422.2 Notice of sale.
- 3422.3 Sale procedures.
- 3422.3-1 Conduct of sale.
- 3422.3-2 Other bidding systems.
- 3422.3-3 Unserved lands.
- 3422.3-4 Consultation with Attorney General.
- 3422.4 Award of lease.

Subpart 3425—Emergency Leasing

- 3425.0-1 Purpose.
- 3425.0-2 Objective.
- 3425.0-6 Policy.
- 3425.1 Application for emergency lease.
- 3425.1-1 Where filed.
- 3425.1-2 Form.
- 3425.1-3 Qualifications of the applicant.
- 3425.1-4 Emergency leasing criteria—existing operations.
- 3425.1-5 Emergency leasing criteria—hardship cases.
- 3425.1-6 Preliminary data.
- 3425.1-7 Rejection of applications.
- 3425.2 Land use plans.
- 3425.3 Environmental assessment.
- 3425.4 Consultation and sale procedures.
- 3425.5 Diligence and other lease terms.

Subpart 3427—Split Estate Leasing

- 3427.0-1 Purpose.
- 3427.0-3 Authority.
- 3427.1 Coal deposits subject to consent.
- 3427.2 Procedures.
- 3427.3 Validation of information.
- 3427.4 Refusal of consent.
- 3427.5 Pre-existing consents.

AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; 43 U.S.C. 1701 et seq.; and 15 U.S.C. 631-644

Subpart 3420—Competitive Leasing

§ 3420.0-1 Purpose.

This subpart sets forth the procedures for the competitive leasing of rights to extract Federal coal.

§ 3420.0-2 Objectives.

The objectives of these regulations are to establish standards and procedures for considering and, where appropriate, causing development of coal deposits through a leasing system involving land use planning and environmental assessment processes; to ensure that an adequate supply of Federal coal is developed efficiently in compliance with laws, planning processes, and other safeguards designed to protect society and the environment; to ensure that coal deposits are leased at

their fair market value; and to ensure that coal deposits are developed in consultation, cooperation, and coordination with the public, State and local governments, and involved Federal agencies.

§ 3420.0-3 Authority.

(a) The regulations in this part are issued under the authority of the statutes cited in § 3400.0-3 of this Group.

(b) The regulations in this Part implement: (1) Primarily Section 2(a) of the Mineral Leasing Act of 1920, as amended by Sections 2 and 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); and (2) The Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.0-6 Policy.

All leases except those issued under the provisions of Part 3430 of this chapter shall be issued competitively. There shall be special opportunity lease sales for qualified public bodies and for small businesses. The fair market value determinations for special opportunity lease sales shall be derived in the same manner as for other lease sales. Before each sale, the Department shall evaluate and compare the method or methods of mining that will achieve the maximum economic recovery of the resource. The Department shall receive fair market value for all coal leased.

§ 3420.1 Procedures.

§ 3420.1-1 General.

The competitive leasing program is part of the Federal coal management program and consists of four principal elements: Comprehensive, multiple resource land use planning; establishment of regional leasing targets; specific tract identification, ranking selection, and scheduling; and lease sale. The application of criteria for unsuitability for mining is an integral part of land use planning. All competitive lease sales under this subpart shall be initiated by the Secretary; applications for a competitive lease will be accepted only when filed under the provisions of Subpart 3425 of this chapter.

§ 3420.1-2 Lands subject to evaluation for leasing.

(a) All lands subject to coal leasing under the mineral leasing laws are subject to evaluation under this subpart (43 CFR 3400.2).

§ 3420.1-3 Known recoverable coal resource areas.

No area outside a designated Known Recoverable Coal Resource Area (KRCRA) shall be leased. Each KRCRA shall be formally designated

by publication in the FEDERAL REGISTER.

§ 3420.1-4 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3402.4, reserve and offer a reasonable number of lease tracts through competitive lease sales open only to a restricted class of potential bidders. Except for the limitation on bidding contained in paragraph (b) of this section, all requirements in this Subpart apply equally to special leasing opportunities, including the requirement that coal be leased at its fair market value.

(b) Special leasing opportunities shall be provided for two classes of potential lessees:

(1) Public bodies.

(i) Only public bodies with a definite plan for producing energy for their own use or for their members or customers shall bid for leases designated as special leasing opportunities for public bodies. To qualify as a definite plan, a plan must clearly state the intended use of the coal and have been approved by the governing board of the public body submitting the plan.

(ii) Each public body shall submit evidence of qualification as part of its expression of leasing interest or upon submission of a bid if no expression of interest is made.

(iii) The Secretary may designate certain coal lease tracts as special leasing opportunities for public bodies only if a public body has submitted an expression of leasing interest under § 3420.1-2, requesting that the procedures of this section apply.

(iv) Leases issued under this section to public bodies may be assigned only to other public bodies.

(2) Small businesses.

(i) When necessary to comply with the requirements of the Small Business Act, the Secretary shall designate a reasonable number of tracts for special leasing opportunities for businesses qualifying under 13 CFR Part 121.

(ii) Leases issued under this section may be assigned only to other small businesses qualifying under 13 CFR Part 121.

§ 3420.1-5 Requirement for land use planning.

(a) The Secretary may not issue a lease for coal development unless the lands containing the coal deposits have been included in a land use plan or land use analysis and unless the sale is compatible with, and subject to, any relevant stipulations, guidelines and standards set out in that plan.

(b) Plans for lands administered by the Bureau of Land Management shall be prepared in accordance with the provisions of § 3420.2 of this title.

(c) Plans for lands under the jurisdiction of the Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall be prepared by the surface managing agency, except as provided in the following subsection.

(d) In an area where the Secretary finds either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan, lands may be leased if

(1) The lands have been included in a comprehensive land use plan prepared, authorized or recognized by the state in which the lands are located, which shall govern Federal coal leasing recommendations affecting surface management except for those decisions for which the Secretary is responsible under the Surface Mining Control and Reclamation Act of 1977, and those recommendations that are in conflict with Federal law; or

(2) The lands have been included in a land use analysis completed under the provisions of Group 1600 of this chapter, or, prior to adoption of the regulations comprising Group 1600, a comparable land use analysis under existing procedures.

(e) In the absence of a completed land use plan, a member of the public may petition for a land use analysis for coal related uses of the land as provided for in this group.

§ 3420.2 Land use plans prepared by the Bureau of Land Management.

§ 3420.2-1 Preparation of a land use plan.

The Bureau of Land Management shall prepare resource management plans and land use analyses as provided in Group 1600 of this chapter, or, prior to adoption of the regulations comprising Group 1600, a comparable management plan or land use analysis under existing procedures.

§ 3420.2-2 Coal resource information.

A land use plan shall contain an assessment of the amount of coal recoverable by either surface or underground mining operations or both.

§ 3420.2-3 Areas acceptable for further consideration for leasing.

The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing. The areas acceptable for further consideration for leasing shall be identified by the following screening procedures in each subsection below. Each screening procedure shall be applied only to those lands still identified as acceptable for further consideration for leasing after application of

the screening procedure in each preceding subsection.

(a) Only those areas subject to evaluation for leasing (§ 3420.1-2) that have high or moderate development potential coal deposits shall be considered acceptable for further consideration for leasing.

(1) This determination shall be based generally on the Geological Survey's Coal Resource Occurrence-Coal Development Potential (CRO/CDP) maps. If CRO/CDP maps are not available, the Geological Survey shall use other available data sources to estimate coal development potential for the land management agency. If other data sources are used, the same criteria for designating coal reserves as high or moderate development potential shall be used.

(2) Coal companies, the State governments, and members of the public may submit non-confidential coal geology and economic data during the earlier inventory phase of planning. Where such information is determined to indicate significant development potential for an area not shown to be of medium or high potential in the CRO/CDP maps, the area shall be considered medium development potential and shall not be excluded from further consideration and application of the remaining screens in the land use planning process.

(b) The authorized officer shall, using the unsuitability criteria and procedures set out in Subpart 3461, review Federal lands to assess where there are areas unsuitable for all or certain types of surface mining operations. Areas considered unsuitable for all types of surface mining operations shall not be acceptable for further consideration for leasing.

(1) On Federal lands administered by the Bureau of Land Management, an unsuitability assessment will be made as part of the land use planning process using both the environmental and resource management criteria of the bureau, including those set out in Subpart 3461, and the reclamation and environmental criteria developed by the Office of Surface Mining Reclamation and Enforcement. This assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(2) In cases where land use plans to be used for coal activity planning have been prepared by other Federal agencies or State governments that do not contain an unsuitability assessment, the Secretary shall conduct an assessment. This assessment shall provide opportunity for public comment.

(c) Multiple land use decisions shall be made which may eliminate addi-

tional coal deposits from further consideration for leasing to protect other resources values of a locally important or unique nature not included in the unsuitability criteria discussed in paragraph (b) of this subsection.

(d) While preparing a land use plan, the Bureau of Land Management shall consult with all qualified surface owners, as defined in § 3400.0-5 of this chapter, whose lands overlie coal deposits to determine preference for or against mining by other than underground mining techniques.

(1) Where a significant number of qualified surface owners in an area who have not previously granted any option, preference, or right of first refusal to any other party to mine their land by other than underground mining methods have expressed a preference against mining by other than underground mining techniques, and that area would be considered acceptable for further consideration for leasing only for development by underground mining techniques. In addition, the area may be offered for lease sale for development by other than underground mining techniques if there are no acceptable alternative areas available to meet the regional leasing target.

(2) An area subject to paragraph (d)(1) of this subsection may be considered acceptable for further consideration for leasing for mining by surface underground or surface methods if the number of qualified surface owners who have expressed their preference against mining by other than underground methods is reduced below a significant number because qualified surface owners who expressed their preference against such mining subsequently have given written consent for such mining; (ii) the ownership of the surface estate of qualified surface owners who expressed such a preference is transferred to surface owners who are not qualified surface owners or to qualified surface owners who subsequently provided consent to such mining; or (iii) both (i) and (ii); and the land use plan is amended accordingly.

(3) If any qualified surface owner indicates a firm intent not to give written consent during the expected life of the land use plan to the mining of the coal deposit underlying his surface estate, and signs a written statement that he has not granted any option, preference, or right of first refusal to acquire consent to any other party, that portion of a coal deposit underlying his land, if otherwise considered acceptable for further consideration for leasing as a result of the application of the screen in the preceding subsection, shall be considered acceptable for leasing for development by underground mining methods.

(4) A portion of a coal deposit considered acceptable for leasing for mining by underground methods pursuant to clause (3) may be considered for leasing also by other than underground mining techniques if the ownership of the surface estate is subsequently transferred to a surface owner other than a qualified surface owner or to a surface owner who does not express a firm intent not to provide consent for such mining and if the land use plan is amended.

(e) The land use plan may provide for impact thresholds to manage coal development. Thresholds are pre-specified levels or rates of coal development, measured by impacts on natural, social or economic resources, for the areas assessed as acceptable for further consideration for leasing. Where a threshold exceeded, the Bureau of Land Management may halt, suspend or condition further consideration of the areas acceptable for leasing.

(f) Where the areas acceptable for further consideration for leasing within a planning unit, in the judgment of the local land manager contain more reserves than are likely to be needed for leasing over the life of the plan, the plan may specify broad areas greater than 60,000 acres for earliest consideration for leasing, if any is to be done.

§ 3420.2-4 Hearing requirements.

The Bureau of Land Management shall conduct a public hearing on the proposed land use plan before it is adopted if such a hearing is requested by any person may be adversely affected by the adoption of the plan. A hearing conducted under Group 1600 of this chapter may fulfill this requirement.

The authorized officer conducting the hearing shall: (a) publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(b) provide an opportunity for testimony by anyone who so desires; and

(c) record the proceedings of the hearing so that a complete transcript of the hearing can be compiled if requested.

§ 3420.2-5 Consultation with Federal surface management agencies.

In situations where another Federal surface management agency administers limited areas overlying Federal coal within the boundaries of a land use plan being prepared by the Bureau of Land Management, the Bureau of Land Management shall consult with the other agency to obtain its recommendations as to the acceptability for further consideration for leasing of the land the other agency administers.

§ 3420.2-6 Consultation with States.

Before adopting a land use plan that makes any formal assessment of lands acceptable for further consideration for leasing, the Bureau of Land Management shall consult with the state Governor and the state agency charged with the responsibility for maintaining the state's unsuitability program (43 CFR 3461.4-1).

§ 3420.2-7 Identification of lands as acceptable for further consideration.

Formal determination that lands are acceptable for further consideration for leasing will be made under Subpart 1600 of this chapter. Any lands determined to be acceptable may be further considered for leasing under § 3420.4 of this Subpart.

§ 3420.3 Regional production goals and leasing targets.

§ 3420.3-1 General.

(a) The coal production regions to which this section applies shall be designated by publication in the FEDERAL REGISTER. They may be changed, or their boundaries altered, by publication in the FEDERAL REGISTER.

(b) The Secretary in consultation with the Secretary of the Department of Energy, affected State Governors, and other concerned parties shall biennially adopt regional coal production goals provided by the Department of Energy adjusted as necessary. The Secretary shall also establish regional leasing targets for the purposes of setting Departmental priorities, aiding the States in planning for potential future impacts of coal development, and supplying the guidance for establishing the amount of coal to be offered through proposed lease sale schedules.

§ 3420.3-2 Evaluation of coal needs.

This section sets out the process the Department shall follow in establishing regional coal needs and appropriate coal management actions.

(a) Proposed regional production goals stating the desired levels of production of coal from various types of coal shall be established by the Department of Energy consistent with the procedures as agreed to by the Secretaries of Energy and of the Interior on production goals for energy resources on Federal lands.

(b) The Secretary shall, within 60 days of receipt of the proposed production goals, review and comment thereon to the Secretary of Energy. The Secretary shall inform the Secretary of Energy of potential policy conflicts or problems concerning, but not limited to: (1) the Department's responsibility for the management, regulation, and conservation of natural resources; (2) the capabilities of Federal

lands and Federal coal resources to meet these goals; and (3) the national need for coal resources balanced against the environmental consequences of developing the resources.

(c) The Secretary of Energy shall issued final production goals not more than 30 days after receipt of the Secretary's comments. In establishing or revising regional lease sale schedules, the Secretary shall be guided by these final production goals of the Department of Energy.

(d) The Department of Energy's final production goals and related production statistics of the Department of the Interior shall be provided to the regional coal teams. Each team shall consider the regional situation and recommend adjustments to the relevant regional production goal based on such factors as (1) public comment received as a result of the publication of the Department of Energy's final regional production goals in the FEDERAL REGISTER, (2) testimony received in hearing(s) held by the team in the region, (3) state government, BLM State Office, regional development policies, (4) administrative capacity to satisfy the indicated level of leasing based on the Department of Energy's final production goals, and (5) other information available to the states and BLM State offices which they believe should receive consideration by the Secretary in his review of the Department of Energy's final regional production goals. Regional teams may also recommend preliminary regional leasing target to the Secretary.

(e) The Secretary shall consider the findings and recommendations of the regional coal teams and other relevant information and review the Department of Energy's final regional production goals to determine whether any adjustments thereto are necessary. The Secretary shall either adopt such goals or make the necessary adjustments thereto and then adopt the goals, as adjusted. Upon adoption of the Department of Energy's final regional production goals, with or without adjustments, such goals, together with the reasons for adjustments, if any, shall be transmitted to the Secretary of Energy and published in the FEDERAL REGISTER.

(f) The Secretary shall also establish preliminary regional leasing targets, based on: the Department of Energy's final regional production targets, as adopted; recommendations of the regional coal teams; and other relevant information. In establishing the preliminary regional leasing targets, at a minimum, the expected and potential production for existing coal leases, noncompetitive coal leases, non-Federal coal holdings, expected non-Federal leasing, the level of competition within the coal region, and the envi-

ronmental benefits of leasing in the management of the Federal coal resource shall be evaluated. Preliminary regional leasing targets shall reflect the difference between desired levels of production in the region and projected supplies, shall be set out on the basis of reserve coal tonnages, shall be for 4 years, and shall be based on the coal that would come into production as a result of Federal leasing. Consideration shall also be given to the relative economic, social, and environmental differences among the coal regions, the comparative benefits of developing Federal rather than non-Federal coal, and other factors as the Secretary deems appropriate. The preliminary leasing targets shall be published in the FEDERAL REGISTER.

(g) In the process of adopting the Department of Energy's final regional production goals and establishing preliminary regional leasing targets, the Secretary may call a national conference of the regional coal teams to review their recommendations.

(h) In addition to participating in the Secretary's regional hearings on the Department of Energy's final regional production goals, the coal and utility industries, agricultural and community organizations, environmental groups, and other concerned parties shall be afforded the opportunity to submit their views on these goals, as adopted by the Secretary, and on the preliminary regional leasing targets by notice in the FEDERAL REGISTER and, if sufficient requests are received, from the public through additional hearing(s).

(i) The Secretary shall consult with the State Governors seeking their views concerning the Department of Energy's final regional production goals, those goals as adopted by him, and the preliminary leasing targets. The Secretary shall particularly seek the Governors' views regarding the relationship between the preliminary regional leasing targets and potential social and economic effects on the State and region.

(j) Based on the consultation with the State Governors, consideration of the Department of Energy's final regional production goals, as adopted, and the comments received on these goals and the preliminary regional leasing targets, the Secretary shall adopt final regional leasing targets for the guidance of regional coal teams as set out in § 3420.3-3 of this title.

(k) Two years after the adoption of each new regional lease sale schedule, the Secretary shall review the final regional leasing target which applies to that schedule through the process set out in paragraphs (b) through (j) of this section and, if necessary, revise the final regional leasing target for the final 2 years of the sale schedule.

(l) The initial regional leasing targets established for the first regional lease sales may be established by the Secretary based on the analysis presented in the final Environmental Statement, Federal Coal Management Program, and related analyses without regard to the provisions of paragraphs (a) through (j) of this section

§ 3420.3-3 Use of final regional leasing targets.

(a) The final regional leasing targets shall guide the regional coal team in the preliminary delineation, ranking, selection and scheduling of tracts for lease sale in the coal production regions.

(b) The final regional leasing targets do not represent final leasing decisions and may, with the approval of the Secretary, be revised by the regional coal teams as a result of consideration of national needs and social, economic, and environmental factors that are taken into account during the tract ranking, selection, and scheduling process. Circumstances justifying a revision of a final regional leasing target may include, but not be limited to, the following:

(1) Expressed industry interests in coal development in the region not reflected in the final regional leasing target;

(2) Expressed interests and rationale thereof from a community or group of communities for coal development in the adjacent and surrounding areas;

(3) Expressed interests for special opportunity sales;

(4) Adjustments indicated by the success or failure of the scheduled lease sales in meeting the final regional leasing targets;

(5) An expressed desire on the part of the state or local government to shift or disperse development patterns in the region or sub-region by additional leasing, reductions in leasing, or shifts in locations of lease sales; and

(6) Results from the analyses contained in the regional lease sale environmental statement.

(c) In any case, one alternative shall be analyzed in the regional lease sale environmental statement that represents the applicable final leasing target established pursuant to § 3420.3-2(j).

(d) Where a regional coal team elects to propose a revision of the relevant final regional target during the selection of tracts proposed for lease sale and the design of the recommended regional sale schedule, the team shall clearly set out the proposed revision and the reasons therefor in the regional sale environmental statement and request public comment on the proposed revision in the public participation process for the regional lease sale environmental statement. Such a

proposed revision shall not become effective unless and until the Secretary approves the recommended alternative leasing target and schedule.

§ 3420.3-4 Environmental assessment.

An environmental assessment in the form of an updating of the coal programmatic environmental statement shall be conducted by the Secretary if he:

(a) determines that the regional production goals and regional leasing targets established in accordance with §§ 3420.3-2(e) and 3420.3-2(j) vary significantly from those analyzed in the most current version of the coal programmatic statement, or

(b) has reason to believe that the tracts available for selection in the next round of the tract ranking, selection, and scheduling process (Section 3420.4-4) in any given region(s) may generate significantly different levels or types of environmental impacts than were anticipated in the most current coal programmatic environmental statement.

§ 3420.4 Activity planning—The leasing process.

§ 3420.4-1 Area identification process.

This section describes the process for identifying, ranking, selecting, and scheduling lease tracts after land use planning has been completed. This process constitutes the "activity planning" aspect of the coal management program. Activity planning may occur (a) where areas acceptable for further consideration for leasing have been identified in the Bureau of Land Management's land use planning process or (b) where the surface management agency or State has completed acceptable planning under § 3420.1-5 of this title. Activity planning may also occur where coal leasing and development is consistent with land use plans completed prior to the adoption of this group 3400 of this title that have been supplemented by the application of the unsuitability criteria in accordance with subpart 3461 of this title and consultation with the surface owners in accordance with § 3420.2 of this title.

§ 3420.4-2 Expressions of leasing interest.

(a) A call for expressions of leasing interest may be made after areas acceptable for further consideration for leasing have been identified through the Bureau of Land Management's land use planning process. A call for expressions of leasing interest may also be made in other areas having acceptable planning completed by other surface management agencies or state governments under the provisions of § 3420.1-5 of this title. The call may be made in any one, several, or all of the above mentioned areas when the Sec-

retary determines, using the regional production goals and regional leasing targets established under § 3420.4-1 of this title, that additional federal coal leasing may be needed to meet local, state, or national needs in the foreseeable future.

(b) The expressions of leasing interest process provided for in this Subpart is not exclusive. Any individual, business entity, governmental entity, or public body may participate in the general public participation opportunities and procedures that are part of the land use planning process which precedes the call for expressions of leasing interest.

(c) Entities qualifying for special leasing opportunities as defined in § 3420.1-4 of this title shall make their intentions known through submission of expressions of leasing interest when called for by the Secretary.

(d) Any expressions of leasing interest may include supportive nonproprietary data. Such data may include, but are not limited to, location and quantities of coal desired, time frames, proposed use of coal, technical coal data, commitment with private surface and coal owners and adjacent land owners or lessees, and basic development proposals. Expressions which identify quantity and quality of coal and timing of need without specifying a location shall be given as serious consideration in activity planning as those that specify a location. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

(e) Public inspection and copying of information submitted under this subpart shall be governed by the procedures in part 2 of this title.

(f) Each call for expressions of leasing interest shall be published as a notice in the FEDERAL REGISTER and in at least one newspaper of general circulation in each affected state. This notice of request shall specify the area or areas involved, information required, the time period within which expressions may be submitted, where to write for further information, and where to submit the expressions.

§ 3420.4-3 Preliminary tract delineation.

(a) Preliminary tracts shall be delineated for analysis during ranking, selection, and scheduling. The preliminary tracts may include non-Federal as well as Federal coal reserves and may include existing mining operations.

(b) In addition to expressions of leasing interest, factors to be considered in delineating preliminary tracts may include but are not limited to:

(1) Technical coal data, including reserve tonnage, rank, sulfur content, seam thickness, and ratio of overburden to recoverable coal;

(2) Conservation considerations, including preliminary calculation of maximum economic recovery, land ownership patterns, and the potential formation of logical mining units; and

(3) Surface ownership, including qualified surface owners' preferences expressed in consultation during land use planning, and the existence of written surface owner consents and their terms.

(c) The potential tracts shall be delineated in accordance with § 3471.1-2 of this title and by seam(s) or coal bed(s). More than one potential tract may be delineated for a specific coal bed or potential mining unit.

(d) When potential public bodies have submitted expressions of leasing interest, tracts to meet those needs shall be delineated when and where technically feasible for public body special leasing opportunities in accordance with § 3420.1-4 of this title.

(e) In cooperation with the Small Business Administration, tracts may be delineated when and where technically feasible for small business special leasing opportunities in accordance with § 3420.1-4 of this title.

(f) Other tracts to be used in a lease or fee exchange (43 CFR Subparts 3435, 3436, and 3437) may be delineated.

(g) A tract profile shall be formulated for each preliminary tract. The profile shall include:

(1) A summary of the information used in the delineation of the tract, and

(2) A site-specific environmental inventory and preliminary analysis.

(h) The regional coal team shall determine the location, priority, and timing of both preliminary tract delineation and site-specific environmental inventory and analysis, subject to limitations of data availability, budget, and manpower.

§ 3420.4-4 Regional tract ranking, selection, and scheduling.

(a) If the final regional leasing target established for any given region suggests a need for additional Federal coal leasing, tracts shall be ranked and a proposed lease sale schedule shall be prepared pursuant to this section. Tracts may also be ranked for other coal management purposes.

(b)(1) The ranking classes shall be those of high medium and low desirability. In ranking the tracts three major data categories shall be considered: coal economics, natural environment, and socioeconomic. The list of subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region. The regional coal team may defer the ranking of any given preliminary tract for which they

determine there is generally insufficient data.

(2) The regional coal team shall solicit the recommendations of Federal and State agencies having appropriate expertise. These Federal agencies shall include but are not limited to the Department of Energy, the Fish and Wildlife Service, the Geological Survey, and the Office of Surface Mining, and any Federal agency that administers the surface of any lands in a preliminary tract.

(c) Upon completion of tract ranking, the regional coal team shall select tracts for inclusion in alternative proposed lease sale schedules or for other management purposes to be forwarded to the Secretary for final selection.

(1) The total of the coal reserves included in the selected tracts in the proposed lease sale schedules shall be based on the applicable final regional leasing target established under the provisions of § 3420.3 of this title.

(2) The regional coal team shall select tracts for scheduling based on tract ranking as adjusted using the following considerations: (i) the compatibility of coal quality and market needs; (ii) cumulative environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future by-pass situations; and (vi) special leasing opportunity requirements.

(3) The regional coal team shall identify all those combinations of tracts which they feel may be equally desirable to meet the applicable final regional target. In addition to tract combinations designed to meet the leasing target, the team may recommend tract combinations representing alternative leasing targets based on impact assessment or revised regional coal demand assessments, but the reasons for all such recommendations must be thoroughly documented.

(d) A notice of intent to rank tracts shall be published in the FEDERAL REGISTER and selected newspapers of general distribution within the region no less than 30 days before the ranking process begins. The notice shall contain a description of the tracts to be ranked and procedures under which any interested parties may become involved in the process.

(e) The results of the process, including the tract rankings, the tracts selected, the proposed schedule, and the list of ranking criteria used shall be published in the regional lease sale environmental statement prepared on the tract ranking, selection, and scheduling process (Section 3420.4-5). Detailed information on each of the tracts ranked will be available for inspection in the Bureau of Land Management State offices that have jurisdiction within the region (43 CFR

Subpart 1821). Those parties interested in commenting on the results of the tract ranking, selection and scheduling process shall have the opportunity to do so in the environmental statement process, prior to any final decision by the Secretary to adopt a regional sale schedule including any of the selected tracts.

(f) Upon the close of the comment period on the draft environmental statement the regional coal team shall analyze the comments and make any revisions in the ranking, selection and scheduling analysis they feel are necessary. The team shall then forward their final recommendations of alternatives for a regional leasing schedule to the Secretary.

(g) The tract ranking, selection, and scheduling process shall normally be repeated every four years with an update performed every two years in accordance with any need identified by the regional production goal and regional leasing target. The Secretary may, in consultation with the Governor(s) of the affected States and surface management agencies, initiate or postpone the process to respond to considerations such as major planning updates, new preliminary tract delineations, and increases or decreases in regional leasing targets.

§ 3420.4-5 Environmental assessment. (a) In conjunction with the tract ranking, selection, and scheduling process, a regional environmental statement of the proposed alternative lease sale schedules shall be prepared in accordance with the provisions of the National Environmental Policy Act of 1969. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal development activities.

(b) The regional lease sale environmental statement prepared for the original regional lease sale schedule shall be updated if the Department makes any significant alterations to that schedule not considered in the original environmental statement.

§ 3420.4-6 Public meetings on proposed tracts.

After the draft regional lease sale environmental statement has been completed on alternative lease sale schedules, a public meeting shall be held in the region affected to announce the results of the ranking, selection, and scheduling process; the alternative lease sale schedules; and the potential impacts, including proposed mitigation measures.

§ 3420.5 Final consultations.

§ 3420.5-1 Timing of consultation.

Following the release of the final regional lease sale environmental statement, and prior to adopting a regional lease sale schedule, the Secretary shall formally consult with the Governors of those States within which lease sales are under consideration, and with any surface management agency other than the Interior Department which administers lands overlying any lease tract under consideration.

§ 3420.5-2 Consultation with surface management agencies.

(a) The Secretary, for any proposed lease tract containing lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior, shall request that the agency: (1) consent, if it has not already done so, to the issuance of the lease (43 CFR 3400.3-1), and (2) if it consents, prescribe the terms and conditions the Secretary will impose in any lease which the head of the agency requires for the use and protection of the nonmineral interests in those lands.

(b) The Secretary may prescribe additional terms and conditions that are consistent with the terms proposed by the surface management agency to protect the interest of the United States and to safeguard the public welfare.

§ 3420.5-3 Consultation with Governors.

(a) The Secretary shall consult the Governor of the State in which any proposed lease tract is located. The Secretary shall give the Governor a specified period of time to comment, not less than 30 days nor more than 60 days, before issuing a final decision regarding any potential lease sale within the state.

(b) When a lease proposal would permit surface mining within the boundaries of a National Forest, the Governor of the State in which the land to be leased is located shall be so notified by the Secretary. If the Governor fails to object to the lease proposal in 60 days, the Secretary may adopt a sale schedule including that tract. If, within the 60 day period, the Governor, in writing, objects to the lease proposal, the Secretary may not hold the sale for that lease tract. Issuance of the lease will be held in abeyance for six months from the date that the Governor objects to the lease. The Governor may, during this six-month period, submit a written statement of reasons why the lease sale should not be held or the lease issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3420.6 Qualified surface owner consent considerations.

§ 3420.6-1 Receipt of written consent.

Prior to making a final decision on a regional lease sale schedule, the Secretary shall give consideration to what acceptable written consents have been received for those potential lease sale tracts under consideration for inclusion in the regional lease sale schedule. The Secretary's considerations shall be given in accordance with the split estate leasing provision of section 3427 of this title.

§ 3420.6-2 Announcement of tracts under consideration.

Following the release of the final regional lease sale environmental statement, the Secretary shall publish an announcement in the FEDERAL REGISTER containing:

- (a) A legal description of all tracts under consideration for inclusion in the regional lease sale schedule, and
- (b) the deadline for anyone to submit a written consent for any tract under consideration by the Secretary for selection for inclusion in the regional lease sale schedule.

§ 3420.6-3 Consideration of consents.

The Secretary shall, pursuant to § 3427.2, take the existence of written consents into consideration in making his decision on the final regional lease sale schedule. All other ranking, selection, and scheduling factors being nearly equal, those tracts for which acceptable written consents have been received shall be chosen for inclusion in the regional coal lease sale schedule over those for which no acceptable written consents have yet been received.

§ 3420.7 Adoption of final regional lease sale schedule.

§ 3420.7-1 Announcement.

Following completion of the requirements of §§ 3420.5 and 3420.6 of this title the Secretary shall announce a final regional lease sale schedule. The announcement shall be published in the FEDERAL REGISTER and contain a legal description of each tract included in the lease sale schedule and the date when each tract has been tentatively scheduled for sale.

§ 3420.7-2 Revision.

(a) The Secretary may revise either the list of tracts included in the schedule or the timing of the lease sales in accordance with any alternatives considered in the regional lease sale environmental statement and during consultation with the Governors and other surface management agencies if such revision would be in the public interest. Notice of any such revision

shall be published in the FEDERAL REGISTER.

(b) Any regional lease sale schedule may be updated or replaced as a result of a new regional tract ranking, selection, and scheduling effort conducted in accordance with the provisions of § 3420.4-4 of this title.

Subpart 3422—Lease Sales

§ 3422.1 Economic evaluation.

§ 3422.1-1 Mineral evaluation and initial comments on fair market value and maximum economic recovery.

After announcement of the regional lease sale schedule, the authorized officer shall:

(a) Solicit public comment on the fair market value of the tract or tracts to be offered. Such solicitation shall present the standards and procedures that guide the Government's appraisal and ask for comments on these items which affect the appraisal such as the terms and conditions of similar market transactions, the quality and extent of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams should be discounted, the value of the surface estate (if private surface), the mining method or methods which would achieve maximum economic recovery of the coal and any other items which might affect the appraisal of the tract or tracts. Such comments will be solicited for a period of 30 days. The authorized officer shall forward copy of all comments to the USGS.

(b) Request from the Geological Survey an evaluation including a coal resource economic value (CREV) and a maximum economic recovery (MER) determination. The CREV includes the consideration of coal quality, quantity, and marketability, probable mining methods, costs, prices, preliminary logical mining units, and other appropriate elements. Prior to issuance of the sale notice, the Geological Survey shall forward this evaluation to the authorized officer. This evaluation shall include the coal resource economic value, mining method evaluation, estimated recoverable reserves by seam, MER determination, coal quality assessment, royalty and compliance bond recommendations; an estimate of reclamation fees that would be generated by mining the proposed lease; and public comments on fair market value and maximum economic recovery.

§ 3422.1-2 Estimated fair market value determination.

When the authorized officer receives the mineral evaluation and accompanying information, he shall estimate the fair market value of the coal de-

posits and the proposed lease. Minimum bonus bids shall be not less than \$25 per acre. The estimated fair market value, minimum acceptable bid, deferred bonus and other financial terms and requirements shall be the same for special opportunity, emergency, and regular competitive leasing. When the estimated fair market value has been determined, the authorized officer shall inform the Geological Survey of the determination.

§ 3422.2 Notice of sale.

(a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county or equivalent political subdivision in which the tracts to be sold are situated. The newspaper notice shall be published once a week for four consecutive weeks. Such notice shall also be posted in the Bureau of Land Management State Office and mailed to any affected surface owner. The lease sale shall not be held until at least 30 days after such posting.

(b) The notice shall:

(1) List the time and place of sale, the type of sale, bidding method, and the description of the tract(s) being offered and minimum acceptable bid to be considered;

(2) Contain a request for final comments on the fair market value of the tract(s) and maximum economic recovery and state the address for submitting the comments and;

(3) Contain information on where a detailed statement of the terms and conditions of the lease(s) which may result from the lease sale may be obtained.

(c) The detailed statement of the terms and conditions of the lease(s) sale offered for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a statement that, if sealed bids are submitted, they may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening the bids;

(3) Contain a statement that, if the sale is by oral bid, sealed bids may also be submitted;

(4) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(5) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(6) Specify that if any bid is rejected, any deposit shall be returned;

(7) Contain a notice that each bid shall be accompanied by the bidder's qualifications (43 CFR 3472.2-2);

(8) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (43 CFR 3422.3-4);

(9) Require the bidder to pay one fifth of the bonus bid;

(10) If appropriate, contain a copy of any written consent given by a qualified surface owner and its terms, including payments which the high bidder, if not the holder of the consent, will have to make; and

(11) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State Office (43 CFR Subpart 1821) in accordance with the provisions of subpart 3427 of this title.

(d) The successful bidder, if any, shall reimburse the Government for the cost of publishing the notice of sale as a condition of lease issuance.

(e) After the lease sale notice is published and the final public comments on fair market value and maximum economic recovery are received, these comments shall be forwarded to the Geological Survey for consideration in the final mineral evaluation, which will be presented to the authorized officer at the convening of the sale panel.

§ 3422.3 Sale procedures.

§ 3422.3-1 Conduct of sale.

(a) Sealed bids shall be received only until the hour on the date specified in the notice of competitive leasing; all bids submitted after that hour shall be returned. The authorized officer shall read all sealed bids. If the announced procedure is to receive sealed bids followed by oral bids, the authorized officer conducting the sale shall open and read the sealed bids, after which the oral bidding shall begin at the level of the highest sealed bid. Only those submitting sealed bids may offer oral bids. After the oral bidding has ceased, the highest bid shall be announced. No decision to accept or reject the high bid will be made at this time.

(b) A sale panel shall convene to determine: (1) if the high bid was properly submitted; (2) if it reflects the fair market value of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. The successful bidder shall be notified in writing. The Department reserves the right to reject any and all

bids regardless of the amount offered, and shall not accept any bid that is less than fair market value. The authorized officer shall notify any bidder whose bid has been rejected and include in such notice a statement of the reason for the rejection. The Department reserves the right to offer the lease to the second high bidder if the successful bidder fails to execute the lease, or is for any reason disqualified from receiving the lease.

(c) Each sealed bid shall be accompanied by a certified check, cashier's check, bank draft, money order, personal check or cash for one-fifth of the amount of the bonus, and a qualifications statement over the bidder's own signature with respect to citizenship and interests held, as prescribed in § 3472.2-2 of this title. A high oral bidder shall tender by certified check, cashier's check, bank draft, money order, personal check or cash at the close of bidding any additional amount necessary to bring the amount tendered with his sealed bid up to one fifth of his oral bid.

§ 3422.3-2 Other bidding systems.

(a) The use of intertract bidding competition is authorized when, and if, the Bureau of Land Management and the Geological Survey in consultation with the Department of Energy determine it is needed in the public interest. The authorization to use intertract bidding competition does not preclude the use of any other form of competitive bidding procedures. Tracts including nontransferable, written consent from a qualified surface owner given prior to August 3, 1977, shall be offered only in a sale using intertract bidding competition.

(b) In intertract bidding competition, the winning bidders, if any, are selected by determining first the tract with the single highest bid per ton of reserves among all tracts, then the tract with the second highest bid and so forth. The bids may be weighted to compensate for differences in the physical quality of the coal in such tracts. If leases are awarded they shall be awarded for tracts proceeding in this sequence until the total reserve tonnage sought to be leased in that sale has been reached. Tracts receiving lower bids per ton shall not be leased as a result of a bid submitted in that sale.

§ 3422.3-3 Unsurveyed lands.

If the land is unsurveyed, the successful bidder shall not be given 30 days notice to comply with the requirements of § 3422.4 of this title for lease issuance until the land has been surveyed under § 3471.1-2 of this title (See 43 CFR 3471.1-2.)

§ 3422.3-4 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit the information set out in this subsection relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder, and the terms of the proposed lease. The statement of coal holdings that the authorized officer will transmit shall include the following best available information required by the Attorney General for each coal tract or deposit controlled by the bidder.

(1) Location of the tract or deposit by county and state (and by public land survey subdivisions if applicable);

(2) Whether the deposit is Federally or non-Federally owned;

(3) Interest held by bidder (if Federal, lease or lease application number; if non-Federal, a statement of the nature of the interest—owner, lessee, operator, joint venturer);

(4) Surface ownership of the tract;

(5) If the surface is owned by other than bidder, nature of agreement with the surface owner if any;

(7) Reserves broken down: (i) by tonnage and acreage; and (ii) into reserves minable by surface and underground mining methods;

(8) BTU content or rank of the coal; and

(b) Any successful bidder who has previously submitted a statement of coal holdings may file a statement incorporating the prior statement by reference to the date and proposed lease or lease application serial number, and containing any and all changes in holdings since the date of the prior submission.

(c) The authorized officer may not issue a lease until 30 days after the Attorney General receives the notice and statement of the successful bidder's coal holdings. If the Attorney General notifies the authorized officer that the statement of coal holdings is incomplete or inadequate, the 30-day period shall stop running on the date of such notification and not resume running until the Attorney General receives the supplemental information.

(d) The authorized officer shall not issue the lease to the successful bidder if, during the 30-day period, the Attorney General notifies the authorized officer that lease issuance would create or maintain a situation inconsistent with the antitrust laws.

(e) If the Attorney General notifies the authorized officer that a lease should not be issued, the authorized officer may:

(1) Reject all bids or may notify the Attorney General in accordance with paragraph (a) of this section that issuance of the proposed lease to the next qualified high bidder is under consideration; or

(2) Issue the lease if, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that: (i) issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976; (ii) issuance of the lease is consistent with the public interest; and (iii) there are no reasonable alternatives to the issuance of the lease consistent with the Federal Coal Leasing Amendments Act of 1976, the anti-trust laws, and the public interest.

(f) If the Attorney General does not reply in writing to the notification in paragraph (a) of this section within 30 days, the authorized officer may issue a lease without waiting for the advice of the Attorney General.

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid and notified the successful bidder, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3-4(e) have been completed, the authorized officer shall send four copies of the lease form to the successful bidder. These forms shall be completed, signed, and returned within 30 days of receipt. In addition, the bidder shall, within the 30-day period, pay the balance of the bonus bid, if required, pay the first year's rental, and file a compliance bond as required by Subpart 3474 of this chapter. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions found in § 3472.2-4 of this title shall apply.

(c) At least half of all competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus payment in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next four anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

Subpart 3425—Emergency Leasing

§ 3425.0-1 Purpose.

This subpart sets forth the regulations for the emergency leasing of Federal coal.

§ 3425.0-2 Objective.

The objective of this subpart is to provide an application process through which the Department may consider holding lease sales apart from the normal competitive leasing process (Sections 3420.4 through 3420.7) where an emergency need for unleased coal deposits is demonstrated.

§ 3425.0-6 Policy.

Leasing proposals developed by this application process differ from those that originate through the normal leasing process only with respect to (a) the method of tract delineation and (b) the manner in which the planning and environmental assessment process will be completed. Only as much of a coal deposit as is necessary to meet the need of the emergency lease applicant without compromising the normal leasing process shall be offered.

§ 3425.1 Application for emergency lease.

§ 3425.1-1 Where filed.

Application for an emergency lease covering lands subject to leasing (43 CFR 3400.2) shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands or minerals involved (43 CFR Subpart 1821).

§ 3425.1-2 Form.

An application for an emergency lease shall be filed on a form approved by the Director, Bureau of Land Management. Three copies of the application and preliminary and other data required by this subpart shall be filed. The application must be accompanied by the filing fee (43 CFR 3473.2).

§ 3425.1-3 Qualifications of the applicant.

Any applicant for an emergency lease shall meet the qualifications required of a lessee as specified in subpart 3472 of this title.

§ 3425.1-4 Emergency leasing criteria—existing operations.

(a) An emergency lease sale may be held in response to an application under this Subpart if the applicant can show:

(1) That the application involves an existing mining operation that has been producing coal for at least two years before the date of application, and either: (i) the Federal coal is needed within three years to maintain an existing mining operation at the average annual level of production, as substantiated by the proposed production levels stated in a mining plan, or new contracted level of production on the date of application, as substantiated by a complete copy of the supply or delivery contract, or both; or (ii) if the coal deposits are not leased they shall

be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for shall be used within three years, as substantiated by the proposed production levels stated in a mining sequence plan; and

(2) That the need for the coal deposits shall have resulted from circumstances that were beyond the control of the applicant or that he could not have reasonably foreseen and planned for.

(b) The extent of any lease issued under this section shall not exceed 8 years of coal reserves at the average annual production level or new contracted level of production on the date of the application.

§ 3425.1-5 Emergency leasing criteria—Hardship cases.

An emergency lease sale may be held in response to an application under this Subpart if the applicant can show that the application involves coal deposits that are needed to avoid significant hardship to the lease applicant or users of the coal.

(a) The application shall show that the coal deposits are unlikely to be delineated or scheduled for sale in the normal competitive system because:

(1) They are outside a coal production region established pursuant to § 3420.3-1(a);

(2) They are inside a coal production region in which activities pursuant to § 3420.4 have yet to be commenced; or

(3) They are of a size, quality or end use that is not significantly related to meeting the regional leasing target.

(b) The application shall show hardship of the following type:

(1) A locality has lost or will lose its alternative sources of domestic coal supply;

(2) A mine which has been closed will be reopened, and local unemployment will be alleviated;

(3) The mine will test new technology whose development is supported by a Federal agency;

(4) Mining and reclamation of the tract will promote a program or policy of another surface management agency, such as rehabilitation of lands scarred by past uses; or

(5) Similar reasons that the Secretary determines substantially in the public interest after allowing opportunity for public hearing and considering the comments therein.

(c) The Secretary may issue a lease under this subpart to any applicant listed in the modified court order in *NRDC v. Hughes*, 454 F. Supp. 148 (D.D.C. 1978).

§ 3425.1-6 Preliminary data.

(a) Any application for an emergency lease shall contain preliminary data to assist the authorized officer in

making an environmental assessment as described in § 3430.3-1 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, (which may be available from state or Federal sources) showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used;

(ii) The method of mining anticipated, including the best estimate of the mining sequence and production rate to be followed;

(iii) The relationship between the mining operations anticipated on the lands applied for and existing or planned mining operations, or support facilities on adjacent Federal or non-Federal lands;

(iv) A brief description, including maps or aerial photographs, as appropriate, of: the existing land use within and adjacent to the lands applied for; known geologic, visual, cultural, or archaeological features; and known habitat of fish and wildlife—particularly threatened and endangered species—any of which may be affected by the proposed or anticipated exploration or mining operations and related facilities;

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

(vi) A statement which describes the intended use of the coal covered by the emergency application; and

(vii) Any other information which will show that the application meets the requirements of this subpart.

(c) The applicant shall not undertake any mining operations on the land except for casual use, without

prior authorization by exploration license. Casual use excludes activities that cause significant surface disturbance or damage to lands, resources, and improvements, such as the use of heavy equipment, explosives, or any off-road vehicle that could disturb the land. Determination of significant surface disturbance or damage shall be made by the authorized officer.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during an environmental assessment may request additional information from the applicant. Where the surface of the land is held by a qualified surface owner (Section 3400.0-5) and the mining method to be used is other than underground mining techniques, the authorized officer shall obtain documents necessary to show ownership of surface. The applicant shall submit evidence of written consent from any qualified surface owner(s). (See 43 CFR Subpart 3427).

§ 3425.1-7 Rejection of applications.

(a) An application for an emergency lease shall be rejected in total or in part when the authorized officer determines that: (1) The application is not consistent with conditions for holding a lease sale specified in § 3425.1-3 of this title; (2) the lands listed in the application are not available for coal leasing under § 3400.2 of this title; (3) the lands applied for are assessed to be unsuitable for leasing under the provisions of subpart 3461 of this title, or lie within an identified area of critical environmental concern; (4) the applicant cannot qualify as defined in § 3425.1-2 of this title to hold a lease under this subpart; (5) preliminary data required under § 3425.1-5 of this title, including additional information specifically requested in writing by the authorized officer, are found to be insufficient to determine whether the application meets the conditions for emergency leasing, and to complete the environmental assessment satisfactorily; (6) the lease would violate the integrity of the normal leasing process; or (7) after thorough investigation of the issues involved, leasing of the lands covered by the application, for environmental or other sufficient reasons, would be contrary to the public interest.

(b) Any application subject to rejection under paragraph (a)(5) of this section shall not be rejected until the applicant is given written notice of the opportunity to provide requested missing information and fails to do so within the time specified in the decision issued for that purpose.

§ 3425.2 Land use plans.

No emergency lease shall be issued under this subpart unless the lands

have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1-5 of this title. The decision to issue an emergency lease shall be consistent with the appropriate land use plan or analysis.

§ 3425.3 Environmental assessment.

(a) Before an emergency lease sale may be held the authorized officer shall conduct an environmental assessment of the proposed lease area and prepare an environmental assessment record.

(1) The environmental assessment shall include:

(i) An evaluation of direct and indirect potential impacts including cumulative impacts of coal leasing and development upon the physical and socio-economic environment of the proposed lease area and adjacent areas that may be affected;

(ii) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(iii) An evaluation of all reasonable alternatives to leasing the area or to any known plans of operation for the proposed area.

(2) The environmental assessment record shall be prepared containing recommendations and special stipulations regarding:

(i) Lands that should be excluded from the proposed areas to avoid unacceptable environmental or special impacts, including those lands to be excluded as identified through the application of the unsuitability criteria in subpart 3461 of this title.

(ii) Any specific measures required to avoid or mitigate adverse impacts to, or to reclaim areas that may be acceptable for leasing and development, including measures to assure appropriate post-mining land use and measures to prevent irreparable damage or destruction of unique environmental values that are identified through the application of the unsuitability criteria in subpart 3461 of this title.

(3) If, based upon the environmental assessment record prepared under (2), the authorized officer determines that an environmental statement is required under the National Environmental Policy Act of 1969, either a statement shall be prepared under 40 CFR 1500, or the authorized officer may determine that because of critical environmental considerations under § 3425.1-6(a)(7) of this title.

(4) If, based upon the environmental assessment record prepared under (2), the authorized officer determines that an environmental statement is not required under the National Environmental Policy Act of 1969, a finding of no significant impact shall be pre-

pared and issued in accordance with 40 CFR 1501.4 and 1506.6.

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of Agriculture for consent, for completion of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3-3).

§ 3425.4 Consultation and sale procedures.

(a) The following sections of subpart 3420 of this title shall apply to all leases offered for sale under the provisions of subpart 3425:

- (1) Section 3420.4-6;
- (2) Section 3420.5-1; and
- (3) Section 3420.5-2.

(b)(1) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under subpart 3425 of this title.

(2) In addition to the requirements set forth in § 3422.2 of this title, the successful bidder must meet the emergency leasing criteria (See § 3425.1-3).

§ 3425.5 Diligence and other lease terms.

Diligent development and continued operation shall be required on all emergency leases consistent with the provisions governing other competitive leases (See 43 CFR 3400.0-5).

Subpart 3427—Split Estate Leasing.

§ 3427.0-1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0-5).

§ 3427.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304).

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0-5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale notice without written consent from the qualified surface owner (43 CFR 3400.0-5) allowing the lessee/operator to enter and commence surface mining operations.

§ 3427.2 Procedures.

(a) Each written consent, evidence of written consent, or statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office (43 CFR Subpart

1821) at least 30 working days prior to the publication of the lease sale notice of the lands to which it applies. It shall be the responsibility of parties intending to file consents to be aware of pending coal lease sale notice dates. Generally, these dates shall be as published in the final regional sale schedule (43 CFR 3420.7).

(b) Written consent or evidence of written consent may be filed by any private person or persons with an interest in the lease sale of split estate lands. A statement of refusal to consent shall be filed by the qualified surface owner.

(c) The filing shall, at a minimum, contain the present legal address of the qualified owner, and, if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof, and the name, ownership, interest, if any, and legal address of the party who acquired the consent.

(d) At each stage in the tract delineation, ranking and scheduling in that region, areas covered by written consents that are filed with the appropriate State Office before the final decision on the pending regional lease sale schedule shall be given priority over other split estate areas where there is a qualified surface owner.

(e) Within fifteen working days after the filing of a written consent, evidence thereof, or a statement of refusal to consent, the State Office shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (2) and (3):

(1) The right to enter and commence mining is transferable to whomever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if, at a minimum, it provides that after the lease sale for the tract to which the consent applies (i) the payment for the consent is to be made by the successful bidder or (ii) the successful bidder is permitted to reimburse the company which first obtained the consent for the purchase price of the consent.

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5 of this title and resides at the address specified in the filing.

(3) The title for all lands described in the filing is held by the named qualified surface owners.

(f) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, transferable, written consent to enter and commence mining has been granted

and that the filing fully discloses all of the terms of the written consent.

(g) The conditions of (e) and (f) shall be met prior to publication of the sale notice.

(h) The State Director shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(i) The terms and purchase price of any applicable written surface owner consent shall be included with the description of the tract(s) in the notice of lease sale.

(j) Any statement of refusal to consent shall be treated as controlling until the land use plan that includes the area covered by the refusal to consent is revised, or the surface estate is sold. When revision of the land use plan is initiated, the qualified surface owner shall be notified that his prior statement of refusal has expired, and given the opportunity to submit another statement.

§ 3427.3 Validation of information.

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

§ 3427.4 Refusal of consent.

Any person having knowledge of qualified surface owners who have refused outright grant written consent is asked to notify the proper Bureau of Land Management State Office. (43 CFR Subpart 1821). Should the authorized officer decide on the basis of this information, any statement of refusal, or qualified surface owner preferences expressed during land use planning, that written consent cannot be obtained for the foreseeable future, coal deposits that underlie land owned by such qualified surface owners shall be eliminated from the regional sale scheduling process.

§ 3427.5 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall be considered valid for the purposes of this subpart. Where the authorized officer determines that any such written consent is not transferable to any potential bidder on the tract in which the area covered by the consent is included, that tract shall be offered for sale only in a sale using intertract bidding

competition as defined in §3400.0-5 of this title.

PART 3430—NONCOMPETITIVE LEASES

Subpart 3430—Preference Right Leases

Sec.

- 3430.0-1 Purpose.
- 3430.0-3 Authority.
- 3430.0-7 Scope.
- 3430.1 Preference right leases.
- 3430.1-1 Showing required for entitlement to a lease.
- 3430.1-2 Commercial quantities defined.
- 3430.2 Application for lease.
- 3430.2-1 Initial showing.
- 3430.2-2 Additional information.
- 3430.3 Planning and environment.
- 3430.3-1 Land use planning.
- 3430.3-2 Environmental assessment.
- 3430.4 Final showing.
- 3430.4-1 Request for final showing.
- 3430.4-2 Additional.
- 3430.5 Determination of entitlement to lease.
- 3430.5-1 Rejection of application.
- 3430.5-2 Appeals, lack of showing.
- 3430.5-3 Determination to lease or seek an exchange.
- 3430.5-4 Lease exchange.
- 3430.6 Lease issuance.
- 3430.6-1 Lease terms.
- 3430.6-2 Bonding.
- 3430.6-3 Lease area.
- 3430.6-4 Duration of leases.
- 3430.7 Trespass.

Subpart 3431—Negotiated Sales—Rights-of-Way

- 3431.0-1 Purpose.
- 3431.0-3 Authority.
- 3431.1 Qualified purchaser.
- 3431.2 Terms and conditions of sale.

Subpart 3432—Lease Modifications

- 3432.1 Application.
- 3432.2 Availability.
- 3432.3 Terms and conditions.

Subpart 3435—Lease Exchange

- 3435.0-1 Purpose.
- 3435.0-3 Authority.
- 3435.1 Coal lease exchanges.
- 3435.2 Qualified exchange proponents—limitations.
- 3435.3 Exchange procedures.
- 3435.3-1 Exchange notice.
- 3435.3-2 Initial response by lessee or lease applicant.
- 3435.3-3 Agreement to terms.
- 3435.3-4 Determination of value.
- 3435.3-5 Notice and public hearing.
- 3435.3-6 Consultation with Governor.
- 3435.4 Issuance of lease, lease modification, or bidding rights.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

- 3436.0-1 Purpose.
- 3436.0-3 Authority.
- 3436.1 Qualified exchange proponents.
- 3436.2 Exchange procedures.
- 3436.3 Recovery costs.
- 3436.4 Lease issuance.

Subpart 3437—Coal Exchange—Alluvial Valley Floors

- 3437.0-1 Purpose.

- 3437.0-3 Authority.
- 3437.1 Qualification criteria.
- 3437.1-1 Qualified exchange proponents.
- 3437.1-2 Unqualified proponents.
- 3437.2 Exchange procedures.

AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 521-531; 30 U.S.C. 351-358; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq. and 43 U.S.C. 1701 et seq.

Subpart 3430—Preference Right Leases

§ 3430.0-1 Purpose.

These regulations set forth procedures for processing noncompetitive (preference right) coal lease applications on Federal lands.

§ 3430.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)).

§ 3430.0-7 Scope.

Because section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands, the regulations in this subpart apply only to lease applications which have already been filed. No additional prospecting permits that confer a preference right to a coal lease shall be issued. Therefore, these regulations address only the procedures for processing pending preference right lease applications. The surface owner consent provisions of the Surface Mining Control and Reclamation Act of 1977 do not apply to preference right lease applications.

§ 3430.1 Preference right leases.

§ 3430.1-1 Showing required for entitlement to a lease.

An applicant for a preference right lease shall be entitled to a noncompetitive coal lease if the applicant can demonstrate that he discovered commercial quantities of coal on the permit lands within the term of the permit, all other requirements having been met.

§ 3430.1-2 Commercial quantities defined.

For the purpose of § 3430.1-1 of this title, commercial quantities is defined as follows:

(a) The coal deposit discovered under the permit shall be of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

(b) The applicant shall present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed

the cost of developing the mine and extracting, removing, transporting, and marketing the coal. The costs of development shall include the estimated cost of exercising environmental protection measures and suitably reclaiming the lands and complying with all applicable Federal and state laws and regulations.

§ 3430.2 Application for lease.

§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of the following information:

(a) The measured and indicated quantity and quality of the reserves discovered within the boundaries of the permit.

(1) Coal quantity shall be indicated by structural maps of the tops of all beds to be mined, isopachous maps of beds to be mined and interburden; and, for beds to be mined by surface mining methods, isopachous maps of the overburden. These maps shall show the location of test holes and outcrops. An estimate of the measured and indicated reserves for each bed to be mined shall be included.

(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each seam to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted.

(b) Topographic maps as available from State or Federal sources showing physical features, drainage patterns, roads and vehicle trails, utility systems, and water sources. The location of proposed development and mining operations facilities shall be identified on the maps. These maps shall include the approximate locations and extent of tailings and overburden storage areas; location and size of pit areas; and the location of water sources or other resources that may be used in the proposed operation and facilities incidental to that use.

(c) A narrative statement that includes:

(1) The anticipated scope of operations, the schedule of operations, and the types of equipment to be used;

(2) The mining method to be used and an estimate of the expected mining sequence and production rate;

(3) The relationship, if any, between operations planned on the land applied for and existing or planned operations and facilities on adjacent lands;

(4) A brief description, including maps or aerial photographs as appropriate of: (i) existing land uses on and adjacent to the applied for land; (ii) known geologic, visual, cultural, or ar-

chaeological features on the applied-for land; and (iii) known wildlife habitat, and that of threatened or endangered plant and animal species, that may be affected by the planned exploration and mining operations;

(5) A brief description of measures planned to prevent or control fire and to mitigate or prevent soil erosion, ground and surface water pollution, damage to wildlife or its habitat, air and noise pollution, hazards to public health and safety, and impacts to the social and infrastructure systems of local communities; and

(6) A brief description of any plans that the applicant wishes to have considered by the authorized officer which show how the applicant expects to reclaim disturbed sites and otherwise meet applicable laws and regulations.

§ 3430.2-2 Additional information.

In addition to the information required by § 3430.2-1 of this title, the applicant shall have submitted certified abstracts indicating the presence of any mining claims lying within or partly within the preference right lease application area that were located prior to the issuance of the prospecting permit.

§ 3430.3 Planning and environment.

§ 3430.3-1 Land use planning.

A preference right lease may not be issued until the lands involved have been included in an acceptable land use plan that complies with the current applicable planning regulations in effect for the land management agency, or a land use analysis, under § 3420.1-5 of this title.

§ 3430.3-2 Environmental assessment.

(a) After the applicant has completed the initial showing required under § 3430.2 of this title, the authorized officer shall conduct an environmental assessment of the proposed preference right lease area and prepare an environmental assessment record.

(b) The environmental assessment shall include:

(1) An evaluation of direct and indirect potential impacts including cumulative impacts of leasing and development upon the physical and socioeconomic environment of the proposed lease area and adjacent areas that may be affected;

(2) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(3) An evaluation of all reasonable alternatives to leasing the area or to any known plans of operation for the proposed area as set forth in any preliminary data and information.

(c) The environmental assessment record shall be prepared containing recommendations on lease terms and special stipulations regarding:

(1) Lands that should be excluded from the proposed lease area to avoid unacceptable environmental or social impacts, including those lands to be excluded as identified through the application of the unsuitability criteria of subpart 3461 of this title;

(2) Any specific measures required to avoid or to mitigate adverse impacts, or to reclaim areas that may be acceptable for leasing and development, including measures to assure appropriate post-mining land use and measures to prevent irreparable damage to or destruction of unique environmental values that are identified through the application of the unsuitability criteria of subpart 3461 of this title.

(d) If, based upon the environmental assessment record prepared under (c), the authorized officer determines that an environmental statement, is required under the National Environmental Policy Act of 1969, such a statement shall be prepared according to 40 CFR 1500.

(e) If, based upon the environmental assessment record prepared under (c), the authorized officer determines that an environmental statement is not required, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6

§ 3430.4 Final showing.

§ 3430.4-1 Request for final showing.

(a) Upon completion of the environmental assessment, the authorized officer shall promptly request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, with the request for a final showing, the following:

(1) The proposed lease form, including any proposed stipulations; and

(2) A copy of the environment assessment, including a map or maps showing all areas subject to specific stipulations because they have been assessed or designated to be unsuitable for coal mining operations or otherwise.

(c) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) The estimated costs that a prudent person would consider before deciding to operate the proposed mine, including but not limited to, the cost of developing the mine, removing the coal, processing the coal to make it salable, transporting the coal, paying applicable royalties and taxes, and complying with applicable laws and regu-

lations, the proposed lease terms, and special stipulations; and

(3) A comparison of the estimated costs and revenues of mining venture constituting the logical mining unit of which the lease would become a part.

(d) The information submitted by the applicant shall be sufficiently detailed to determine whether the applicant's showing (1) has a reasonable factual basis, (2) supports the applicant's assertion that the proposed lease contains commercial quantities of coal, and (3) reflects a consideration of all factors required by this section.

(e) The applicant may delete any area subject to special stipulations, because it has been assessed to be unsuitable or otherwise, and the costs of mining subject to the stipulations, from the final showing required by paragraph (c) of this section.

§ 3430.4-2 Additional information.

(a) If the applicant for a preference right lease has not submitted all information required in § 3430.4-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested additional information within 60 days of the receipt of the request. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

§ 3430.5 Determination of entitlement to lease.

§ 3430.5-1 Reflection of application.

The authorized officer shall reject the application if:

(a) The final showing of the applicant fails to show that coal exists in commercial quantities on the applied-for lands; or

(b) The applicant does not respond to a request for additional information within the time period specified in § 3430.4-2 of this title.

§ 3430.5-2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in Part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence,

that commercial quantities of coal exist in the proposed lease area.

§ 3430.5-3 Determination to lease or seek an exchange.

(a) A preference right lease shall be issued if, upon review of the application, the land use plan or analysis, and environmental assessment record, the authorized officer determines:

(1) The coal has been discovered in commercial quantities on the lands applied for; and

(2) That the applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(3) That the protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated and that the mined land can be reclaimed in accordance with applicable laws and regulations.

(b) If the authorized officer determines that:

(1) The land under application has been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as land that should be unavailable for coal development because of land use or resource conflicts or as land that is unsuitable for coal mining operations under the provisions of subpart 3461 of this title; and

(3) The land is exempted from the application of any relevant unsuitability criteria or, for similar reasons, the Secretary lacks the authority to prevent damage to or loss of the land use of resource values threatened by lease operations—he may recommend that the Secretary initiate exchange proceedings under § 3530.5-4 of this title.

§ 3430.5-4 Lease exchange.

The Secretary may initiate, upon his own initiative, the recommendation of the authorized officer, or the request of the applicant, lease exchange procedures under 43 CFR Subpart 3435 for the issuance of coal lease bidding rights, modifications to existing coal leases, a mineral lease under subpart 3526 of this title, or in the case of an application including lands in an alluvial valley floor, the issuance of a coal lease under provisions of subpart 3436 of this title, if he finds that the three conditions in § 3430.5-3(b) of this title are met.

§ 3430.6 Lease issuance.

§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to requirements for Federal coal leases established in subpart 3475 of this title including: diligent development and continued operation, royalty and rental rates, and logical mining

unit requirements as provided in § 3475.4 of this title.

§ 3430.6-2 Bonding.

The compliance bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

§ 3430.6-3 Lease area.

A preference right lease shall include all lands in the application used in determining the entitlement to a lease.

§ 3430.6-4 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in subpart 3400.0-5 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end of each period of 10 years thereafter.

§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

Subpart 3431—Negotiated Sales—Rights-of-Way.

§ 3431.0-1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*).

§ 3431.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201 (a)(1)).

§ 3431.1 Qualified purchaser.

Any person who has acquired a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 and is required to remove Federal coal in order to develop, construct or use the right-of-way is qualified to purchase the coal to be removed.

§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject

to the same requirements for health and safety protection, surface protection and rehabilitation, and maximum economic recovery that apply to the lease involved.

(c) Where the right-of-way is not being used in connection with the development of a Federal coal lease, the removal of the coal shall be made subject to the Surface Mining Control and Reclamation Act of 1977, and subject to such terms and conditions as the authorized officer determines are necessary: (1) to protect public health, safety, and the environment; and (2) to ensure the same recovery of the resource in the right-of-way that is required under a lease under the provisions of group 3400 of this title.

(d) All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of group 2800 of this title.

Subpart 3432—Lease Modifications

§ 3432.1 Application.

(a) A lessee may apply for a modification of a lease to include coal lands or coal deposits contiguous to those embraced in a lease. In no event shall the acreage in the application, when combined with the total area added by all modifications made after August 4, 1976, exceed 160 acres or the number of acres in the original lease, whichever is less.

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage to the United States.

§ 3432.2 Availability.

(a) The authorized officer may modify the lease to include the lands applied for if he determines that: (1) the modification serves the interests of the United States; (2) there is no competitive interest in the lands or deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation.

(b) Coal deposits underlying land the surface of which is held by a qualified surface owner, and which would be mined by other than underground mining techniques, may not be added to a lease by modification.

(c) The lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands.

§ 3432.3 Terms and conditions.

(a) The terms and conditions of the original lease shall be consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083) shall not apply to any lands covered by the lease prior to its modification until the lease is re-adjusted.

(b) Before a lease is modified, the lessee shall file a written acceptance of the conditions imposed in the modified lease and a written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land. Such modifications must meet the same environmental safeguards as set out for emergency leases in § 3425.5 of this title.

Subpart 3435—Lease Exchange**§ 3435.0-1 Purpose.**

The objective of these regulations is to provide methods for exchange of coal resources when it would be in the public interest to shift the impact of mineral operations from leased lands to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

§ 3435.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203);

(2) Section 522 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1272); and

(3) Section 1 of the Act of October 30, 1978 (92 Stat. 2073).

§ 3435.1 Coal lease exchanges.

Where the Secretary determines that coal exploration, development and mining operations would not be in the public interest on an existing lease or preference right lease application, or where the Congress has authorized lease exchange for a class or list of leases, an existing lease or preference right lease application may be relinquished in exchange for:

(a) Cases where the Congress has specifically authorized, the issuance of a new coal lease.

(b) The issuance of coal lease bidding rights of equal value;

(c) A mineral lease other than coal, by mutual agreement between the ap-

plicant and the Secretary under subpart 3526 of this title; or

(d) Federal coal lease modifications; or

(e) Any combination of the above.

These interests may be granted to the extent of the Secretary's authority in exchange for the relinquishment of all or part of the existing lease or preference right lease application area, any part of which has been or may be assessed to be unacceptable for development because of non-coal public values identified or discovered after the lease or permit was issued.

§ 3435.2 Qualified exchange proponents—Limitations.

(a) Any person who holds a Federal coal lease, or a preference right lease application that has been found to meet the commercial quantities requirements of §§ 3430.1 and 3430.5 of this title on lands described in § 3435.1 of this title is qualified to ask the Secretary to initiate an exchange.

(b) Except for leases qualified under subpart 3536 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases listed in section 1 of the Act of October 30, 1978.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is appropriate.

§ 3435.3 Exchange procedures.**§ 3435.3-1 Exchange notice.**

(a) The Secretary shall initiate exchange procedures by notifying in writing a Federal coal lessee or preference right lease applicant that consideration of an exchange of mineral leases or other coal lease interests is appropriate. The notification may be on the Secretary's initiative or in response to a request under § 3435.2 of this title.

(b) The exchange notice shall include a statement of why the Secretary believes an exchange may be in the public interest.

(c) The notice may contain a description of the lands on which the Secretary would grant lease interest in exchange. If the exchange is for coal development rights, the lands shall be selected from those found acceptable for further consideration for leasing under § 3420.2 of this title. The description of the interests under consideration for relinquishment may include all or part of an existing lease or preference right lease application.

(d) The notice shall contain a request that the lessee or preference right lease applicant indicate whether he is willing to negotiate an exchange.

§ 3435.3-2 Initial response by lessee or lease applicant.

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing within 60 days of the receipt of the exchange notice. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or grant of coal lease modifications and, if appropriate, a showing of written consent from a qualified surface owner.

(b) A reply to the exchange notice by a lessee or preference right lease applicant indicating willingness to enter into an exchange shall also indicate willingness to provide the geologic and economic data needed by the Secretary to determine the fair market value of the lease or lease application to be relinquished. The lessee or preference right lease applicant shall also indicate willingness to provide any geologic and economic data in his possession that will help the Secretary to determine the fair market value of the potential Federal lease exchange tract or tracts.

§ 3435.3-3 Agreement to terms.

(a) If both parties wish to proceed with the exchange, the authorized officer and the lessee or preference right lease applicant shall:

(1) Negotiate the selection of appropriate exchange lands containing a logical mining unit of coal in those cases where the Secretary is authorized to issue a coal exchange lease, or a minable unit of leasable minerals other than coal;

(2) Negotiate appropriate coal lease modifications;

(3) Negotiate to establish the value of coal lease bidding rights; or

(4) Negotiate any combination of the above.

(b) Any land leased in exchange shall, to the satisfaction of the lessee or lease applicant and the Secretary, be a lease tract containing coal or deposits of other leasable minerals equal to the fair market value of the relinquished deposits.

(c) Land proposed for lease in exchange for, or for inclusion in, an existing lease or preference right lease application shall be subject to leasing under subpart 3420 or group 3400 or 3500 of this title as appropriate.

§ 3435.3-4 Determination of value.

The value of the land to be leased, or added by lease modification, or of the bidding rights to be issued in exchange shall, to the satisfaction of the applicant and the Secretary, be equal to the estimated fair market value of the lease or lease application to be relinquished.

§ 3435.3-5 Notice and public hearing.

After the lessee or lease applicant and the Secretary agree on the land to be leased, the coal lease modifications to be granted or the bidding rights to be issued, notice of the proposed exchange shall be published in the FEDERAL REGISTER and in at least one newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least one public hearing will be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. The hearing(s), if any, shall be held to obtain public comments on the merits of the proposed exchange.

§ 3435.3-6 Consultation with Governor.

(a) The Secretary will notify the Governor of each State in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor at least 45 days after this notification to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one State, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3435.4 Issuance of lease, lease modification, or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that the issuance of a coal or other mineral lease or coal lease modification or coal lease bidding rights in exchange for the relinquishment of the existing lease, preference right lease application or portion thereof is in the public interest, lease stipulations for operations on the exchange lease or modified lease shall be established.

(b) The exchange lease shall contain:

(1) A statement that the lessee thereby relinquishes any right or interest in the lease or preference right lease application exchanged; and

(2) A statement of the Secretary's findings that lease issuance is in the public interest.

(c) The exchange lease or lease modification shall be issued upon re-

linquishment of the lease, preference right lease application, or portion thereof.

(d) The exchange lease or lease modification shall be subject to all relevant provisions of group 3400 or 3500 of this chapter, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211, as appropriate.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

§ 3436.0-1 Purpose.

The purpose of this subpart is to establish procedures for coal lease exchanges where coal development operations would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude.

§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.1 Qualified exchange proponents.

(a) The coal lease exchange program for alluvial valley designations shall be limited to any person who holds a Federal coal lease or preference right lease application on lands west of the 100th Meridian, west longitude, and who has made substantial financial and legal commitments, as defined in § 3400.0-5 of this title prior to January 4, 1977, in connection with the lease or preference right lease application, and who otherwise meets the criteria in the proviso in section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977. Any such person may propose an exchange under this subpart.

(b) The lease offered in exchange by the Secretary shall be for lands determined to be acceptable for leasing under criteria of the Bureau of Land Management and Geological Survey, including the unsuitability criteria in subpart 3461 of this title.

§ 3436.2 Exchange procedures.

(a) Any qualified lessee may propose the exchange to the Secretary through the Bureau of Land Management State Office having jurisdiction over the leased land (43 CFR Subpart 1821). No special form of application is required.

(b) The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

§ 3436.3 Recovery of costs.

The exchange proponent shall bear all administrative costs of the ex-

change, including the cost of establishing the value of each lease involved in the exchange.

§ 3436.4 Lease issuance.

Any coal lease issued as a result of an exchange under this subpart shall be subject to all relevant provisions of group 3400 of this title, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

Subpart 3437—Coal Exchange—Alluvial Valley Floors

§ 3437.0-1 Purpose.

The purpose of this subpart is to establish criteria for the exchange of privately owned (fee) coal for unleased federally-owned coal where coal mining operations would interrupt, discontinue, or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude.

§ 3437.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)); and

(2) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

§ 3437.1 Qualification criteria.

§ 3437.1-1 Qualified exchange proponents.

The fee coal exchange program for alluvial valley designations shall initially be limited to all qualified persons who own coal west of the 100th Meridian, west longitude, and:

(a) Who have made substantial financial and legal commitments, as defined in § 3400.0-5 of this title prior to January 4, 1977, in connection with the coal holding; or

(b) Who have had a surface mining permit rejected by the state regulatory authority because the holding is in an alluvial valley floor, and who otherwise meet the criteria of the provision in section 510(b)(5). Any such person may propose and exchange under this subpart.

§ 3437.1-2 Unqualified proponents.

The Secretary shall not consider an exchange proposed by the owner of coal west of the 100th Meridian, west longitude, where:

(a) The premining land use is undeveloped rangeland which is not significant to farming;

(b) The area of affected alluvial valley floor is small and provides or may provide only negligible support for production from one or more farms; or

(c) The prohibition against mining the coal in the alluvial valley floor does not substantially decrease the value of, or prevent the successful mining of, other coal that would have been developed in conjunction with the coal in the alluvial valley floor.

§ 3437.2 Exchange procedures.

(a) The Secretary shall evaluate each qualified exchanged request and determine whether the exchange proponent is qualified and whether a request is appropriate and is in the public interest.

(b) Qualified requests shall be processed in accordance with the regulations of subpart 2200 of this title subject to the provisions of this subpart.

(c) The coal deposits offered in exchange by the Secretary shall be assessed as acceptable for mining operations under the criteria of the Bureau of Land Management, and the Geological Survey, including the unsuitability criteria in subpart 3461 of this title.

(d) Exchange under this subpart, whether proposed by the Secretary or by a qualified exchange proponent, may include the coal estate, the entire mineral estate, or the entire mineral and surface estates in the lands conveyed to the United States or in the lands conveyed by the United States.

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

Sec.

3440.0-1 Purpose.

3440.0-3 Authority.

3440.1 Terms.

3440.1-1 Forms.

3440.10-2 Limitations on coal use.

3440.1-3 Area and duration of license.

3440.1-4 Production reports.

AUTHORITY: 30 U.S.C. 181 et seq.

Subpart 3440—Licenses to Mine

§ 3440.0-1 Purpose.

A license to mine may be issued without the payment of any rent or royalty for a period of 2 years to an individual or association of individuals to mine and take coal for local domestic need for fuel.

§ 3440.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 8 of the Act of February 25, 1920, as amended (30 U.S.C. 208).

§ 3440.1 Terms.

§ 3440.1-1 Forms.

(a) Four copies of the application for a license to mine coal for domestic needs or for a renewal of such a li-

cense shall be filed on a form approved by the Director, or a substantial equivalent of the form, in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821). The original application or any renewal application shall be accompanied by the fee prescribed in section 3473 of this title, except when the application is filed by a relief agency.

(b) A municipality shall file the information required under § 3472.2-5(b) of this title.

§ 3440.1-2 Limitations on coal use.

License may be issued to municipalities for the nonprofit mining and disposal of coal to their residents for household use only. Under such a license, a municipality may not mine coal either for its own use or for non-household use such as for factories, stores, other business establishments and heating and lighting plants.

§ 3440.1-3 Area and duration of license.

(a) A license to mine for an individual or association in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time. Each license to mine shall terminate at the end of 2 years from the date of issuance, unless an application for a 2 year renewal is filed and approved before its termination date.

(b)(1) The authorized officer may authorize a recognized and established relief agency of any State, upon the agency's request, to take government-owned coal deposits within the State and provide the coal to localities where it is needed to supply families on the rolls of such agency who require coal for household use but are unable to pay for that coal.

(2) Tracts shall be selected in areas assessed as acceptable for mining operations and at points convenient to supply the families in a locality. Each family shall be restricted to the amount of coal actually needed for its use, not to exceed 20 tons annually.

(3) Coal shall be taken from such tracts only by those with written authority from the relief agency. All mining shall be done pursuant to such authorization. All Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(c) A license to mine to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more. A license to mine to a municipality shall termi-

nate at the end of 4 years from date of issuance, unless an application for a 4 year renewal is filed and approved before its termination date.

§ 3440.1-4 Production reports.

Each holder of a license to mine shall provide an annual report to the appropriate Bureau of Land Management State Office describing all operation conducted under such license.

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases—Readjustment of Terms

Sec.

3451.1 Readjustment of lease terms.

3451.2 Notification of readjusted lease terms.

Subpart 3452—Relinquishment, Cancellation, and Termination

3452.1 Relinquishment.

3452.1-1 General.

3452.1-2 Where filed.

3452.1-3 Acceptance.

3452.2 Cancellation.

3452.2-1 Cause for cancellation.

3452.2-2 Cancellation procedure.

3452.3 Termination.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

3453.1 Qualifications.

3453.1-1 Who may transfer or receive a transfer.

3453.1-2 Number of copies required.

3453.1-3 Sole party in interest.

3453.1-4 Attorney-in-fact.

3453.1-5 Heirs and devisees.

3453.2 Requirements.

3453.2-1 Application.

3453.2-2 Forms and statements.

3453.2-3 Filing location and fee.

3453.2-4 Bonds.

3453.2-5 Description of lands.

3453.3 Approval.

3453.3-1 Conditions for approval.

3453.3-2 Disapproval of transfers.

3453.3-3 Effective date.

3453.3-4 Extensions.

AUTHORITY: 30 U.S.C. 181 et seq; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq; 42 U.S.C. 7101 et seq; and 43 U.S.C. 1701 et seq.

Subpart 3451—Continuation of Leases—Readjustment of Terms

§ 3451.1 Readjustment of lease terms.

(a) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and each 10-year period thereafter, if the lease is extended.

(b) The authorized officer shall notify the lessee whether or not any readjustment of terms and conditions is to be made. If feasible, the authorized officer shall so notify the lessee of any lease which becomes subject to re-

adjustment prior to January 1, 1980, before the expiration of the initial 20-year period, or any succeeding 10-year period.

(c) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976.

(d) The authorized officer shall notify the lessee of any lease which becomes subject to readjustment after January 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(e) In the notification that the lease will be readjusted, the authorized officer shall require the lessee to furnish information specified in § 3422.3-4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed. No lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General.

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, as soon as feasible, notify the lessee of the proposed readjusted lease terms.

(b) The notification of readjusted lease terms shall also notify the lessee that if he does not file either an objection to the proposed readjustment or a relinquishment of the lease within 60 days after receipt of notice of the proposed readjusted terms from the authorized officer, the terms of such readjustment shall be considered agreed upon.

(c) The notification of readjusted lease terms shall specify the procedures to be followed if the lessee objects to the proposed readjusted lease terms.

(d) The readjusted lease terms shall become effective either 60 days after the lessee is notified what they are, or 30 days after the authorized officer transmits the required information to

the Attorney General, whichever is later.

Subpart 3452—Relinquishment, Cancellation and Termination

§ 3452.1 Relinquishment.

§ 3452.1-1 General.

Upon a satisfactory showing that the public interest shall not be impaired, the lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres), or any seam or bed of the coal deposits therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished.

§ 3452.1-2 Where filed.

A relinquishment shall be filed in triplicate by the lessee in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821).

§ 3452.1-3 Acceptance.

The relinquishment shall be effective on the date that the authorized officer determines that all accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

§ 3452.2 Cancellation.

§ 3452.2-1 Cause for cancellation.

(a) The authorized office, after compliance with § 3452.2-2 of this title, may take the appropriate steps to institute proceedings in a court of competent jurisdiction for the cancellation of the lease if the lessee: (1) fails to comply with the provisions of the Mineral Leasing Act of 1920, as amended; (2) fails to comply with the general regulations in force at the date of the lease or in force at the effective date of any readjustment of the terms and conditions of the lease, or with regulations issued after lease issuance and readjustment but made applicable under the terms of the lease; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) A waiver of any particular breach or cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other breach or cause of forfeiture, or for the same cause occurring at any other time.

(c) Any lease issued or readjusted before August 4, 1976, on which the lessee does not meet either the diligent development requirements or the continued operation requirements shall be subject to cancellation in whole or in part. In deciding whether to initiate lease cancellation proceedings under this subsection, the Secre-

tary shall not consider adverse circumstances which arise out of (1) normally foreseeable costs of compliance with requirements for environmental protection; (2) commonly experienced delays in delivery of supplies or equipment; or (3) inability to obtain sufficient sales.

§ 3452.2-2 Cancellation procedure.

The lessee shall be given notice of any proposed cancellation and be afforded 30 days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the lease should not be cancelled.

§ 3452.3 Termination.

(a) Any lease issued or readjusted on or after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements.

(b) Existing leases that are not included within an approved mine plan shall be subject to assessment of all or part of the lands contained in the lease as unsuitable for coal mining operations as set out in § 3461.1(c) of this title. This assessment shall be made either after an operator submits a mining plan, at the initiation by the lessee of a request for exchange, or during land use planning. If a lease area or portion of a lease area is assessed to be unsuitable for coal mining operations or the lease is found to be incompatible with the land use plan, the Secretary may enter into negotiations with the lessee for exchange of coal lease bidding rights or other mineral leases or coal lease modifications as described in subpart 3435 of this title. If a lease area or portion of a lease area is assessed to be unsuitable because of impacts to alluvial valley floors, the Secretary may enter into negotiations with the lessee to exchange the lease for another Federal coal lease in an area acceptable for mining operations pursuant to subpart 3436 of this title.

(c) Should a lease be cancelled or terminated for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties, already paid or due, shall be forfeited to the United States.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

§ 3453.1 Qualifications.

§ 3453.1-1 Who may transfer or receive a transfer.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified to hold such leases, except as provided by §§ 3420.1-4(b)(1)(iii) and 3420.1-4(b)(2)(ii) of this title.

(b) A minor is not qualified to hold a lease and transfers to a minor shall not be approved. However, a transfer in behalf of a minor heir or devisee of a lessee to a legal guardian or trustee may be approved.

§ 3453.1-2 Number of copies required.

A single signed copy of the qualifications required under subpart 3472 of this title is sufficient.

3453.1-3 Sole party in interest.

The transferee or transferees shall comply with § 3472.2-1 of this title.

§ 3453.1-4 Attorney-in-fact.

The attorney-in-fact shall comply with § 3472.2-3 of this title.

3453.1-5 Heirs and devisees.

An appropriate showing as required under § 3472.2-4 of this title shall be furnished before the heirs or devisees of a deceased holder of a lease, operating agreement, or royalty interest in a lease can be recognized by the Secretary as the new holders of a lease, agreement, or interest.

§ 3453.2 Requirements.

§ 3453.2-1 Application.

Applications for transfers of leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, shall be filed for approval within 90 days from final execution.

§ 3453.2-2 Forms and statements.

(a) Transfers of any interest shall be filed in triplicate.

(b) No specific form need be used for requests for approval of transfers. The application shall contain evidence of the transferee's qualifications, including statements on other coal leases held by the transferee. This evidence shall consist of the same showing of qualifications required of a lease applicant by subpart 3472 of this title.

(c) A separate instrument of transfer shall be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation involving more than one lease are filed at the same time, one request for approval and one showing as to the qualifications of the transferee shall be sufficient.

(d) A single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other mortgage documents shall not be accepted for filing.

§ 3453.2-3 Filing location and fee.

An application for approval of a transfer shall be filed in the Bureau of Land Management State Office having jurisdiction over the leased lands proposed for transfer (43 CFR Subpart

1821). Each application shall be accompanied by a nonrefundable filing fee (43 CFR 3473.2).

§ 3453.2-4 Bonds.

(a) If a bond is required, it shall be furnished before a lease transfer may be approved. The consent of the surety to the substitution of the transferee as principal or a new bond with the transferee as principal shall be submitted if the original lease required the maintenance of a bond. If the transfer is for part of the leased land only, it shall be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee shall be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the leased lands transferred.

(b) The person transferring a lease, including a sublessee, and the surety for the lease shall continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, and the transferee's surety shall be responsible for all lease obligations notwithstanding any terms in the transfer to the contrary.

§ 3453.2-5 Description of lands.

The description of the lands involved in the instrument of transfer shall match the description of lands in the lease. The approval of transfer of only a part of the lands described in a lease shall create a new lease. The transfer of only a part of the lands shall be permitted only where it is demonstrated that each remaining lease area is a logical mining unit or part of a logical mining unit.

§ 3453.3 Approval.

§ 3453.3-1 Conditions for approval.

No transfer shall be approved if:

(a) the transferee is not qualified to hold a lease under subpart 3472 of this title;

(b) the lease bond is insufficient;

(c) the filing fee has not been submitted;

(d) the transferee would hold the lease in violation of the acreage requirements set out in subpart 3472 of this title;

(e) the transfer would create an overriding royalty interest in violation of § 3473.3 of this title; or

(f) the lease account is not in good standing.

§ 3453.3-2 Disapproval of transfers.

The authorized officer shall deny an application for approval of a transfer if any reason why the transfer cannot be approved (listed in § 3454.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved.

§ 3453.3-3 Effective date.

A transfer shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ 3453.3-4 Extensions.

The filing of or approval of any transfer shall not alter any terms or extend any time periods under the lease, including those dealing with readjustment of the lease and the diligent development and continued operation on the lease.

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review—Unsuitability for Mining

Sec.

3461.0-3 Authority.

3461.0-6 Policy.

3461.1 Relationship of leasing to unsuitability assessment.

3461.1-1 Application of criteria on unleased lands.

3461.1-2 Application of criteria on leased lands.

3461.1-3 Relationship of assessment to designation.

3461.2 Criteria for assessing and designating lands unsuitable for all or certain types of mining operations.

3461.3 Exploration.

3461.4 Unsuitability assessment procedures

3461.4-1 Assessment and land use planning.

3461.4-2 Consultation with state and local governments.

3461.4-3 Findings.

3461.4-4 Petitions to designate lands.

3461.4-5 Underground mining exception.

3461.4-6 Land exclusion.

Subpart 3465—Surface Management and Protection

3465.0-1 Purpose.

3465.0-2 Objective.

3465.0-3 Authority.

3465.0-7 Applicability.

3465.1 Use of surface.

3465.2 Obligations and standards of performance.

3465.3 Inspections and noncompliance.

3465.3-1 Inspections.

3465.3-2 Discovery of noncompliance.

3465.3-3 Failure of lessee or holder of license to mine to act.

3465.4 Alternative postmining land use.

3465.5 Bonding.

3465.6 Conduct, completion, and abandonment of operations.

3465.7 Environmental assessment—Postmining land use.

AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

**Subpart 3461—Federal Lands Review—
Unsuitability for Mining**

§ 3461.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) The general unsuitability criteria in section 522(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(a));

(2) The Federal lands review in section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)); and

(3) The prohibitions against mining certain lands in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)).

§ 3461.0-6 Policy.

(a) The Department shall carry out the review of Federal lands under section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) through land use planning assessments by the surface management agency regarding the unsuitability of Federal lands for coal mining.

(b) The Department shall develop sufficient information prior to leasing any tract to be reasonably certain that subsequent operations on any tract can be conducted in compliance with the Surface Mining Control and Reclamation Act of 1977.

(c) All criteria regarding the designation of lands as unsuitable for surface coal mining operations established by the Office of Surface Mining Reclamation and Enforcement under 30 CFR Part 760 shall be used in assessing unsuitability, in addition to the criteria in this subpart.

§ 3461.1 Relationship of leasing to unsuitability assessment.

§ 3461.1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall be applied, prior to lease issuance, to all lands leased after the issuance of these regulations, including emergency leases and noncompetitive (preference right) leases.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific emergency lease application, lease modification, or preference right lease application under either § 3425.2 or § 3430.3 of this title; or

(2) During land use planning under the provisions of § 3420.1-5 of this title.

§ 3461.1-2 Application of criteria on leased lands.

(a) For any lease issued prior to the promulgation of these regulations the unsuitability criteria shall be applied to all non-producing leases. The Department may await the lessee's submission of a mining plan before applying the unsuitability criteria. This shall not preclude evaluation of an existing lease as part of the normal land use planning process.

(b) The leased lands shall be reviewed in light of the unsuitability criteria to determine which, if any, apply. If any criterion applies, the specific criterion and any exception to it which applies shall be identified. If a criterion does apply and the conditions do not permit an exception, a further decision shall be made on whether the leased land is exempt from the criterion because of the source of the authority for the criterion. Mining shall be permitted on land to which no criterion applies; on land where a criterion applies but where the conditions permit an exception; and on land to which a criterion applies, no exception applies, but which is exempt from that criterion.

§ 3461.2 Criteria for assessing and designating lands unsuitable for all or certain types of mining operations.

(a)(1) *Criterion.* All Federal lands included in the following land systems or categories and an appropriate buffer zone, if necessary, as determined by the land management agency, shall be considered unsuitable for coal mining: National Park System, National Wildlife Refuge System, National Systems of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, lands acquired with money derived from the Land and Water Conservation Fund, Custer National Forest, and Federal lands in incorporated cities, towns, and villages. All Federal lands which are recommended for inclusion in any of the above systems or categories by the Administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations may be approved within the Custer National Forest with the consent of the Department of Agriculture as long as no surface coal mining operations are permitted.

(3) *Exemptions.* The application of this criterion to lands within the listed land systems and categories is subject to valid existing rights. The application of the buffer zone portion of this criterion does not apply to lands to which substantial financial and legal

commitments were made prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(b)(1) *Criterion.* Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, or other public purposes, or for agricultural crop production on Federally owned surface shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued, and mining operations approved, in such areas if the surface management agency determines that:

(i) All or certain types of coal development (e.g., underground mining) will not interfere with the purpose of the right-of-way or easement; or

(ii) The right-of-way or easement was granted for mining purposes; or

(iii) The right-of-way or easement was issued for a purpose for which it is not being used; or

(iv) The parties involved in the right-of-way or easement agree to leasing; or

(v) It is impractical to exclude such areas due to the location of coal and method of mining and such areas or uses can be protected through appropriate stipulations.

(3) *Exemption.* This criterion does not apply to lands on which mining would result in substantial loss or reduction of long-range productivity of food or fiber products, and it does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(c)(1) *Criterion.* Federal lands affected by section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act of 1977 shall be considered unsuitable. This includes lands within 100 feet of the outside line of the right-of-way of a public highway or within 100 feet of a cemetery, or within 300 feet of an occupied public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

(2) *Exceptions.* A lease may be issued and mining operations approved for lands:

(i) Used as mine access roads or haulage roads that join the right-of-way for a public road;

(ii) For which the Office of Surface Mining Reclamation and Enforcement has issued a permit to have public roads relocated;

(iii) For which owners of occupied buildings have given permission to mine within 300 feet of their buildings.

(3) *Exemption.* The application of this criterion is subject to valid existing rights.

(d)(1) *Criterion.* Federal lands designated as wilderness study areas shall be considered unsuitable while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the surface management agency, the environmental assessment or impact statement on the lease sale or mine plan must consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if authorized by the Federal Land Policy and Management Act of 1976.

(3) *Exemption.* The application of this criterion to lands for which the Bureau of Land Management is the surface management agency is subject to valid existing rights.

(e)(1) *Criterion.* Scenic Federal lands designated by visual resource management analysis as Class I or II (an area of outstanding scenic quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if the surface management agency determines that mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(f)(1) *Criterion.* Federal lands under permit by the land management agency for scientific studies involving food or fiber production, natural resources, or technology demonstrations and experiments shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operations approved:

(i) With the concurrence of the principal scientific user or agency; or

(ii) Where it would be stipulated that the mining would be done in such a way as not to jeopardize the purpose of the study as determined by the surface management agency.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which

include operations on which a permit has been issued.

(g)(1) *Criterion.* All districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance which are included in or eligible for inclusion in the National Register of Historic Sites, and an appropriate buffer zone around the outside boundary of the designated property (to protect the inherent values of the property that make it eligible for listing in the National Register) as determined by the land management agency, in consultation with the Advisory Council on Historic Preservation or by procedures approved by the Advisory Council, shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operations approved if the surface management agency determines:

(i) With the concurrence of the state, that the site, structure, or object is of regional or local significance only; or

(ii) In consultation with the Advisory Council on Historic Preservation, that the direct and indirect effects of all or certain stipulated methods of coal mining on a property in or eligible for the National Register of Historic Sites will not result in significant adverse impacts to the site, structure, or object.

(3) *Exemption.* The application of this criterion is subject to valid existing rights.

(h)(1) *Criterion.* Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operation approved in an area or site if the surface management agency determines that:

(i) With the concurrence of the state, the area or site is of regional or local significance only;

(ii) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(iii) The mining of the coal resource under appropriate stipulations will enhance information recovery (e.g., paleontological sites).

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(i)(1) *Criterion.* Federally designated critical habitat for threatened or endangered plant and animal species, and habitat for Federal threatened or endangered species which is determined by the Fish and Wildlife Service and the surface management

agency to be of essential value and where the presence of threatened or endangered species has been scientifically documented, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the Fish and Wildlife Service, the surface management agency determines the species and its habitat will not be adversely affected by all or certain stipulated methods of coal mining operations.

(j)(1) *Criterion.* Lands containing habitat deemed critical or essential for plant or animal species listed by a state pursuant to state law as endangered or threatened shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the state, the surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k)(1) *Criterion.* A bald or golden eagle nest that is determined to be active and a buffer zone of land in a ¼ mile radius from a nest are areas which shall be considered unsuitable. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

(2) *Exceptions.* (i) A lease may be issued and mining operations approved if:

(A) They can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(B) Golden eagle nest sites will be moved with the concurrence of the Fish and Wildlife Service.

(ii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(l)(1) *Criterion.* Bald and golden eagle roost and concentration areas used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(m)(1) *Criterion.* Federal lands containing falcon cliff nesting sites with active nests and a buffer zone of Federal land in a ¼ mile radius from the nest to provide needed prey habitat

shall be considered unsuitable. Consideration of availability of habitat for prey species shall be included in the determination of buffer zones.

(2) *Exception.* A lease may be issued and mining operations approved where the land management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(n)(1) *Criterion.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(o)(1) *Criterion.* Federal lands which the land management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife species shall be considered unsuitable. Such lands may include appropriate buffer zones as determined jointly by the surface management agency and the state. Such lands shall include:

- (i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;
- (ii) The most critical winter ranges for deer, antelope, and elk; and
- (iii) Migration corridors for elk.

(2) *Exceptions.* A lease may be issued and mining operations approved if the surface management agency, in consultation with the state wildlife agency, determines that:

- (i) Complete mitigation is possible; or
- (ii) The species being protected will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p)(1) *Criterion.* Federal lands containing: (i) inland lakes, impoundments, and associated wetlands;

(ii) Inland shallow, predominantly vegetated wetlands; or

(iii) Riverine wetland systems, lower and upper perennial systems with flow greater than 5 cubic feet per second, and riparian zones in a "relatively undisturbed" state that are larger than one linear mile along a riverine system shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operations approved where the surface management agency determines that:

(i) The use of appropriate stipulated mining or reclamation technology will not significantly affect the wetlands or will provide for complete restoration; or

(ii) The wetlands contain no significant values for groundwater recharge, fish and wildlife habitat, recreation, or scientific study.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q)(1) *Criterion.* Riverine, coastal, and special floodplains (100-year recurrence interval) shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved where the surface management agency determines that:

(i) Leasing a particular tract and approval of mining operations is the only practicable method of access to coal lands outside the floodplain which are not unsuitable under any other criterion; and

(ii) Potential for harm to people or property and natural and beneficial values of floodplains can be minimized through stipulated use of demonstrated and available mining and mitigation measures.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r)(1) *Criterion.* Federal lands which have been committed by the land management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved where:

(i) The surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree; and

(ii) The municipality or water users concur in the issuance of the lease.

(3) *Exemption.* This criterion does not apply to lands: to which the opera-

tor made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s)(1) *Criterion.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands $\frac{1}{4}$ mile from the outer edge of the far banks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(t)(1) *Criterion.* When the surface management agency, with the concurrence of the Secretary of Agriculture (Soil Conservation Service), identifies Federal lands having prime farmland soils, such lands shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued when:

(i) Conditions such as soil rockiness, angle of slope or historic or other conditions leading to a negative determination under the permanent regulations of the Office of Surface Mining Reclamation and Enforcement are present; or

(ii) Scientific studies show that crop yields equivalent to pre-mining crop yields on non-mined prime farmlands in the surrounding area under equivalent levels of management could be obtained and that an operator or potential operator could meet the soil reconstruction standards in section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1265(b)(7)), and the permanent regulations of the Office of Surface Mining Reclamation and Enforcement.

(u)(1) *Criterion.* Federal lands identified by the surface management agency, with the concurrence of the State in which they are located, as alluvial valley floors according to the definition and standards in the permanent regulations under the Surface Mining Control and Reclamation Act of 1977, and the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exception.* A lease may be issued where all or certain methods of coal mining would not interrupt, discontinue, or preclude farming on land to which the first sentence of the criterion applies.

(v)(1) *Criterion.* As information regarding reclamation on a local or regional basis becomes available, the surface management agency shall use such information to determine if areas of Federal land are reclaimable to the standards of the Surface Mining Control and Reclamation Act of 1977, the regulations, and approved state programs. Examples of information on reclamation would be soil studies, hydrologic studies, and studies concerning revegetation. If any area is determined not to be so reclaimable, such area shall be considered unsuitable.

(2) *Exception.* A lease may be issued upon presentation of information which contains results of studies showing that reclamation is possible to the standards in the permanent regulations of the Office of Surface Mining Reclamation and Enforcement, and an approved state program, including state regulations.

(w)(1) *Criterion.* Federal lands in a state to which is applicable a criterion (i) proposed by the state, and (ii) adopted by rulemaking by the Secretary of the Interior, shall be considered unsuitable for coal mining.

(2) *Exceptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft land use plan, or supplement to a land use plan, for the area in which such land is included, or

(ii) The surface management agency, in consultation with the state, determines that, although the criterion applies, mining will not adversely affect the value which the criterion would protect.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(x)(1) *Criterion.* A buffer zone of Federal lands necessary to provide protection for any adjacent area designated as land unsuitable for mining by the state shall be considered unsuitable.

(2) *Exception.* The buffer zone may be modified or eliminated where the surface management agency, in consultation with the state, determines that all or parts of the zone are not necessary to protect the designated area.

(3) *Exemption.* This criterion does not apply to lands: to which the opera-

tor made substantial financial and legal commitments prior to January 4, 1977; on which operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

§ 3461.3 Exploration.

(a) Assessment of any area as unsuitable for coal mining pursuant to sections 522 and 523 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1273) and the regulations of this subpart does not prohibit exploration of such area for coal under subpart 3410 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

§ 3461.4 Unsuitability assessment procedures.

§ 3461.4-1 Assessment and land use planning.

(a) The authorized officer of the surface management agency shall describe in the land use plan the results of the application of each of the unsuitability criteria to the planning area. The authorized officer shall state each instance in which a criterion is found to be applicable and show the area which is excluded from leasing, or, should the authorized officer determine that the conditions for an exception exist, describe the area to which the exception applies and discuss in detail the reasons why the exception is made and what type of conditions or stipulations will be required in any lease or mining permit to assure compliance with the exception.

(b) The authorized officer shall make his assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The plan shall also disclose when during activity planning or lease sale activities, or prior to approval of a permit to conduct surface mining operations, the data needed to make an assessment with reasonable certainty would be generated. When that data is obtained, the authorized officer shall make public his assessment on the application of each criterion and the reasons therefor in the land use plan, whether or not additional data are needed. The documentation in the plan should explain whether additional data would be likely to affect significantly the conclusions reached about unsuitability.

(c) All lands not assessed as unsuitable for all methods of coal mining may be considered further in the land use planning and activity planning processes. All lands assessed as unsuit-

able for certain methods of coal mining may be considered in these processes with the condition that those methods of coal mining would not be authorized.

§ 3461.4-2 Consultation with State and local governments.

Prior to assessing Federal lands as unsuitable for coal mining, the Secretary shall consult with the appropriate state and local agencies (43 CFR 3420.2-6).

§ 3461.4-3 Findings.

Prior to assessing Federal lands as unsuitable, the Secretary shall prepare a detailed statement for such lands on (a) the potential coal resources, (b) the demand for coal resources, and (c) the impact of such designation on the environment, the economy, and the supply of coal.

§ 3461.4-4 Petitions to designate lands.

Petitions for designation or termination of a designation of Federal lands as unsuitable for coal mining shall be processed by the Office of Surface Mining Reclamation and Enforcement under 30 CFR Part 769.

§ 3461.4-5 Underground mining exception.

Federal lands with coal deposits that would be mined by underground mining methods shall not be considered unsuitable for coal mining where there will be no surface coal mining operations, as defined in § 3400.0-5 of this title. Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, it shall be considered unsuitable unless the surface managing agency finds that a relevant exception or exemption applies. Surface impacts include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

§ 3461.4-6 Land exclusion.

After a land use plan is completed, the Department may exclude additional lands from consideration for leasing, or reassess lands as acceptable for further consideration for leasing, as warranted by new information, including action by the Office of Surface Mining Reclamation and Enforcement on a petition to designate lands unsuitable or to terminate a designation of unsuitability, without formally revising the plan. A description of any lands so excluded shall be added to the documentation developed during the tract analysis phase of activity planning (43 CFR 3420.4).

Subpart 3465—Surface Management and Protection

§ 3465.0-1 Purpose.

This subpart establishes rules for the management and protection of the surface of the Federal lands when coal deposits are developed.

§ 3465.0-2 Objective.

This subpart is designed to ensure the use of effective and reasonable coal mining operations, and the reclamation of mined lands in a manner that will minimize any adverse social, economic, and environmental effects of coal mining.

§ 3465.0-3 Authority.

These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

§ 3465.0-7 Applicability.

This subpart applies to leases and licenses to mine, issued by the Bureau of Land Management for the development of Federal coal.

§ 3465.1 Use of surface.

(a) The operator shall use only that part of the surface area included in his lease or license that has been included in an approved permit (30 CFR Part 741).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in Title 43 of the Code of Federal Regulations are required for the installation of power generation plants or commercial or industrial facilities on the lands in the lease or license to mine or for the use of mineral materials or timber from the land in the lease or license to mine.

(c) Other land uses under other authorities may be allowed on an area in a lease or license to mine provided there is no unreasonable conflict and that neither the mining operation nor the other use is endangered by the presence of the other.

§ 3465.2 Obligations and standards of performance.

(a) A lessee or a holder of a license to mine shall comply with the regulations in this subpart and with the terms and conditions of the lease or license.

(b) A lessee or a holder of a license to mine shall comply with the applicable performance standards in 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

(c) When changed conditions or newly discovered information indicate that an approved permit (30 CFR Part 741) needs to be reviewed or supplemented, the authorized officer may propose the appropriate revision or supplement to the Office of Surface

Mining Reclamation and Enforcement.

(d) The authorized officer may develop and include additional specific stipulations in any lease or license to mine involving special management consideration.

§ 3465.3 Inspections and noncompliance.

§ 3465.3-1 Inspections.

The authorized officer, Mining Supervisor, or inspectors from the Office of Surface Mining Reclamation and Enforcement shall have the right to enter lands under a lease or license to mine at any reasonable time.

§ 3465.3-2 Discovery of noncompliance.

(a) Upon discovery of activities that are not in compliance with the terms of a lease or license to mine, or with an approved permit (30 CFR 741), but that do not pose a serious and immediate threat to public health and safety or to natural resources and environmental quality, the authorized officer shall refer the matter to the Office of Surface Mining Reclamation and Enforcement for remedial action, or to the Mining Supervisor on matters of exploration.

(b) Upon discovery of activities that are not in compliance with the terms of a lease, license to mine, or an approved permit and that do pose a serious and immediate threat to public health and safety or to resources and environmental quality, the authorized officer may order the immediate cessation of the threatening activities, provided that the Office of surface Mining Reclamation and Enforcement is immediately informed of the issuance of any such emergency cessation order.

§ 3465.3-3 Failure of lessee or holder of license to mine to act.

Failure of a lessee or the holder of a license to mine to comply with an emergency cessation order issued under § 3465.3-1(b) or with a written notice of noncompliance issued by the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, shall be grounds for suspension of the permit and may be grounds for cancellation of the lease or license to mine, in accordance with subpart 3452 of this title.

§ 3465.4 Alternative postmining land use.

When a lessee, holder of a license to mine, or permit applicant proposes any postmining land use that is substantially different from the land use prior to exploration and mining, the Office of Surface Mining Reclamation and Enforcement, with the approval of the authorized officer of the appropriate surface management agency,

may approve such alternative postmining land use. The authorized officer shall not approve the alternative postmining land use unless it:

(a) Does not conflict with land use plans for the area in the lease or license to mine and surrounding lands;

(b) Is considered an equal or better economic or public use of the land as compared to the premining use of the land;

(c) Does not, as determined by the authorized officer, cause a significant adverse impact upon the aesthetic character of the land or the lives of people who inhabit the area immediately surrounding the land in the lease or license to mine; and

(d) Is approved by the legal owner of the surface where the surface is privately owned.

§ 3465.5 Bonding.

(a) Bonding for compliance with the terms of a lease or license to mine shall be furnished in accordance with the applicable provisions of subpart 3474 of this title.

(b) A reclamation bond shall be secured in accordance with 30 CFR Part 742.

(c) A lease or license to mine may be denied any applicant or successful bidder who has previously forfeited a bond because of failure to comply with an approved plan (30 CFR Part 741) or permit unless the affected lands covered by that plan or permit have been reclaimed without cost to the Federal Government. Nothing in this section shall modify or limit the discretionary authority of the authorized officer to deny for other causes any successful bid or application for a lease or license to mine.

§ 3465.6 Conduct, completion, and abandonment of operations.

All terms of the permit shall be administered under 30 CFR Chapter VII, Subchapter D, and 30 CFR 211.

§ 3465.7 Environmental assessment—Postmining land use.

If the Director of the Office of Surface Mining Reclamation and Enforcement determines that a decision to approve any alternative postmining land use or alternative rehabilitation practices would constitute a major Federal action requiring an environmental statement under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) and that the decision has not been discussed in any environmental statement that may have been prepared for the issuance of the lease or the approval of the permit, a statement shall be prepared by the Director of the Office of Surface Mining Reclamation and Enforcement.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

- 3471.1 Land description requirements.
- 3471.1-1 Land description in application.
- 3471.1-2 Land description in lease.
- 3471.2 Effect of land transactions.
- 3471.2-1 Disposal of land with a reservation of minerals.
- 3471.2-2 Effect of conveyance to state or local entity.
- 3471.3 Cancellation or forfeiture.
- 3471.3-1 Cancellation or forfeiture for cause.
- 3471.3-2 Protection of bona fide purchaser.
- 3471.3-3 Sale of underlying interests.
- 3471.4 Future interest, acquired lands.

Subpart 3472—Qualification Requirements

- 3472.1 Qualified applicants and bidders.
- 3472.1-1 Special qualification provisions.
- 3472.1-2 Acreage limitations.
- 3472.2 Filing of qualification statements.
- 3472.2-1 Sole party in interest statement.
- 3472.2-2 Contents of qualification statement.
- 3472.2-3 Signature of applicant.
- 3472.2-4 Special qualifications, heirs, and devisees (estates).
- 3472.2-5 Special qualifications, public bodies.

Subpart 3473—Fees, Rentals, and Royalties

- 3473.1 Payments.
- 3473.1-1 Form of payment.
- 3473.1-2 Where paid.
- 3473.1-3 When paid.
- 3473.2 Fees.
- 3473.2-1 General fee provisions.
- 3473.2-2 Exemptions from fee provisions.
- 3473.3 Rentals and royalties.
- 3473.3-1 Rentals.
- 3473.3-2 Royalties.
- 3473.4 Suspension of operation, production, and payment obligations.

Subpart 3474—Bonds

- 3474.1 Bonding requirements.
- 3474.2 Type of bond required.
- 3474.3 Qualified sureties.
- 3474.4 Default.

Subpart 3475—Lease Terms

- 3475.1 Duration of leases.
- 3475.2 Dating of leases.
- 3475.3 Land description.
- 3475.4 Diligent development and continued operation.
- 3475.5 Logical mining unit.

AUTHORITY: 30 U.S.C. 181 et seq. and 30 U.S.C. 351-359

Subpart 3471—Coal Management Provisions and Limitations

§ 3471.1 Land description requirements.

§ 3471.1-1 Land description and coal deposit in application.

Any application for a lease, lease modification, or license to mine shall include a complete and accurate description of the lands for which the lease, modification, or license to mine is desired.

(a) If the land has been surveyed under the public land rectangular

system, each application shall describe the land by legal subdivision (section, township, and range), or aliquot part thereof (but not less than 10 acres).

(b) Where protraction surveys have been approved and the effective date has been published in the FEDERAL REGISTER, the application for land shown on such protraction surveys and filed on or after the effective date shall contain a description of the land according to the section, township, and range shown on the approved protraction surveys.

(c)(1) If the land has not been surveyed on the ground and is not shown on the records as covered by protraction surveys, the application shall describe the land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska, the description of unsurveyed land shall be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by an agency of the United States such as the Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission, if the record position is available to the general public.

(2) If the land is acquired land which has not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, the land shall be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(i) If the land constitutes less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

(ii) If the description in the deed or other document by which the United States acquired title to the land does not include the courses and distance between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances.

(iii) The application shall be accompanied by a map on which the land is clearly marked showing its location with respect to the administrative unit or project of which it is a part. It is not necessary to submit a map if the land has been surveyed under the rectangular system of public land sur-

veys, and the land description can be conformed to that system.

(iv) If an acquisition tract number has been assigned by the acquiring agency to the tract, a description by tract number will be accepted.

(v) Any accreted land not described in the deed to the United States shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3471.1-2 Land description in lease.

All lands in a public land survey system State shall have a cadastral survey performed at Federal Government expense before a lease or license to mine may be issued, except for areas covered by a skeleton survey, i.e. Utah and Alaska, and the lease when issued shall be described by legal subdivision (section, township, and range), or aliquot part thereof (but no less than 10 acres).

§ 3471.2 Effect of land transactions.

§ 3471.2-1 Disposal of land with a reservation of minerals.

(a) Where the lands included in a lease or license to mine have been or may be disposed of with reservation of the coal deposits, a lessee or the holder of a license to mine must comply fully with the law under which the reservation was made. See, among other laws, the Acts of March 3, 1909 (34 Stat. 844; 30 U.S.C. 81); June 22, 1910 (35 Stat. 583; 30 U.S.C. 83-85); December 29, 1916, as amended (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377); and October 21, 1976 (90 Stat. 2759; 43 U.S.C. 1719).

(b) Any sale or conveyance of lands subject to the Mineral Leasing Act for Acquired Lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under that act.

(c) Leases on acquired lands outstanding on August 7, 1947, and covering lands subject to the Mineral Leasing Act for Acquired Lands may be exchanged for new leases to be issued under that act subject in each case to such appropriate conditions as may be prescribed.

(d) When: (1) the coal is to be mined by other than underground mining techniques, (2) the surface of the land is owned by a qualified surface owner, and (3) the lease is issued after August 3, 1977, the lessee shall comply with the terms of the written consent of the qualified surface owner not inconsistent with Federal and state mined

land reclamation laws and regulations (43 CFR 3420.6).

§ 3471.2-2 Effect of conveyance to State or local entity.

(a) If the United States has conveyed the title to, or otherwise transferred control of the land surface containing the coal deposits to, (1) any state or political subdivision, agency, or its instrumentality; (2) a college, any other educational corporation, or association; or (3) to a charitable or religious corporation or association, the transferee shall be notified by certified mail of the application for the license to mine or lease, or the scheduling of a lease sale. The transferee shall be given a reasonable period of time within which to suggest any stipulations necessary for the protection of existing surface improvements or uses to be included in the license or lease and state the supporting facts, or to file any objections to its issuance and state the supporting facts.

(b) If the state or local entity opposes the issuance of the license to mine or lease, the facts submitted in support of the opposition must be carefully considered and each case separately decided on its merits. Opposition by the state or local entity is not a bar to issuance of the license to mine or lease for the reserved minerals in the lands. (See, however, § 3461.2(b).) In each case, the final determination on whether to issue the license to mine or lease is based on the best interests of the public.

§ 3471.3 Cancellation or forfeiture.

§ 3471.3-1 Cancellation or forfeiture for cause.

Any lease or license to mine may be cancelled or forfeited for violation of the act under which the lease or license to mine was issued, applicable Federal regulations, or the terms of the lease or license to mine (43 CFR 3452.2).

§ 3471.3-2 Protection of bona fide purchaser.

(a) The Secretary's right to cancel or forfeit a lease for any violation shall not adversely affect the title or interest of a bona fide purchaser of any lease or any interest therein. A bona fide purchaser must be a person, association, or corporation qualified to hold such lease or interest, even though the holdings of the party or parties from which the lease or interest therein was acquired or their predecessor(s) in title (including the original lessee of the United States), may have been cancelled or forfeited for any such violation.

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws has

the right to be dismissed promptly as a party by showing that he or she holds and acquired his or her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws. No hearing shall be necessary on such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(c) If, during any such proceeding, a party waives his or her rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

§ 3471.3-3 Sale of underlying interests.

If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is cancelled or forfeited, and if there are valid options to acquire the lease or an interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein shall be sold to the highest responsible qualified bidder by competitive bidding, in a manner similar to that provided for in the offering of leases by competitive bidding, subject to all outstanding valid interests and options. If less than the whole interest in the lease or interest therein is cancelled or forfeited, the partial interest shall be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer finds appropriate. However, the terms shall not be less favorable to the Government than those of the best competitive bid received.

§ 3471.4 Future interest, acquired lands.

An application to lease lands in which the United States has a future interest filed less than one year prior to the date of the vesting in the United States of the present interest in the coal shall be rejected. Upon the vesting in the United States of the present possessory interest in the coal, all applications for future interest leases outstanding at the time shall automatically lapse. Only applications for a present interest lease shall be considered after that time.

Subpart 3472—Qualification Requirements

§ 3472.1 Qualified applicants and bidders.

A lease may be issued only to (a) citizens of the United States; (b) associations of citizens organized under the laws of the United States or of any state thereof, which are authorized to hold such interests by the statute under which they are organized and by the instrument establishing their association; (c) corporations organized under the laws of the United States or of any state thereof, including a company or corporation operating a common carrier railroad; and (d) public bodies, including municipalities.

§ 3472.1-1 Special qualification provisions.

(a) Each applicant or bidder for a lease shall furnish a signed statement showing that, with the area applied or bid for, the applicant or bidder's interests in leases and lease applications, held directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3472.1-2 of this title.

(b) A lease or license to mine shall not be issued to a minor but may be issued to a legal guardian or trustee on behalf of a minor.

(c) Every company or corporation operating a common carrier railroad shall make a statement that it needs the coal for which it seeks a lease solely for its own railroad use; that it operates main or branch lines in the state in which the lands involved are located; that the aggregate acreage in the leases and applications in which it holds an interest, directly or indirectly, does not exceed 10,240 acres; and that it does not hold more than one lease for each 200 miles of its railroad lines served or to be served from such coal deposits. This last requirement excludes spurs or switches, branch lines built to connect the leased coal with the railroad, and parts of the railroad operated mainly by power not produced by steam.

(d) Aliens may not acquire or hold any direct or indirect interest in licenses to mine or leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, that corporation's application or bid for a lease shall be rejected.

(e) A license to mine may not be issued to a private corporation.

§ 3472.1-2 Acreage limitations.

(a)(1) No person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, as-

sociation, or corporation shall take, hold, own, or control at one time Federal coal leases, lease applications, or bids on more than 46,080 acres in any one state and in no case on more than 100,000 acres in the United States.

(2) No person, association, or corporation holding, owning, or controlling leases, lease applications or bids (individually or through any subsidiary, affiliate, or person under common control) on more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or lease application held on that date. However, it shall not be permitted to hold any additional interests in any further leases or lease applications until such time as its holdings, ownership, or control of leases or applications has been reduced below 100,000 acres within the United States.

(b)(1) In computing acreage held, owned, or controlled, the accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party owning an interest in a corporation or association shall be the party's proportionate part of the corporation's or association's accountable acreage. However, no person shall be charged that person's pro rata share of any acreage holdings of any association or corporation unless that person is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(2) On acquired lands, if the United States owns only a fractional interest in the coal resources of the lands involved, only that part of the total acreage involved in the lease, proportionate to the extent of ownership by the United States of the coal resources, shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3472.2 Filing of qualification statements.

§ 3472.2-1 Sole party in interest statement.

Every applicant or bidder for a lease or license to mine shall submit to the Bureau of Land Management State Office having jurisdiction over the lands (43 CFR Subpart 1821) at the time of filing the application or bid a signed statement that the applicant is the sole party in interest in the application or bid, and the lease or license to mine, if issued. If the applicant or bidder is or will not be the sole party in interest, the applicant or bidder shall set forth the names of the other interested parties in the application or bid. A separate or joint statement shall be signed by them and by the ap-

plicant or bidder setting forth the nature and extent of the interest of each in the application or bid, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, shall accompany the application or bid. All interested parties shall furnish evidence of their qualifications to hold such interest in the lease or license to mine including a statement regarding knowledge of written consent from any qualified surface owner for the area involved (43 CFR Part 3427).

§ 3472.2-2 Contents of qualification statement.

(a) If the applicant or bidder is an individual, he shall submit a signed statement setting forth his citizenship with each application or bid for a license to mine or lease.

(b) If the applicant or bidder is an association or partnership, the application or bid shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (1) that it is authorized to hold a lease or license to mine; (2) that the member or partner executing the lease or license to mine is authorized to act on behalf of the association or partnership in such matters; (3) the names and addresses of all members owning or controlling more than 10 percent of the association or partnership and their citizenship and holdings.

(c) If the applicant or bidder for a lease or license to mine is a corporation, it must submit statements showing (1) the state of incorporation; (2) that the corporation is authorized to hold leases or licenses to mine; (3) the names of the officers authorized to act on behalf of the corporation; (4) the percentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, address, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount and class of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Any applicant who has previously filed a qualification statement may submit either a serial number reference to the record and office where the statement is filed or a new qualifi-

cation statement. Applications on behalf of a corporation shall be accompanied by proof of the signatory's authority to execute the instrument except in a case where an officer of a corporation signs an application on behalf of the corporation.

(d) To qualify as a small business for the purpose of bidding on any tract to be offered as part of a special opportunity lease sale for small businesses, the bidder shall submit evidence demonstrating qualification under 13 CFR 121.

(e) Where there is a legal guardian or trustee, the following shall be provided: a certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or obligations arising thereunder; and statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to the trustee's own citizenship and holdings, including holdings for the benefit of other minors.

§ 3472.2-3 Signature of applicant.

Every application or bid for a lease or license to mine shall be signed by the applicant or bidder or by its attorney-in-fact. If executed by an attorney-in-fact the application or bid shall be accompanied by the power of attorney and the applicant's own statement as to citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

§ 3472.2-4 Special qualifications, heirs, and devisees (estates).

If an applicant or bidder for a license to mine or a lease dies before the license to mine or lease is issued, the license or lease shall be issued: if the estate has not been probated, to the executor or administrator of the estate; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee. The lease or license to mine shall not issue until the following information has been filed:

(a) Where probate of the estate has not been completed: (1) evidence that the person who acts as executor or administrator has the authority to act in that capacity and to act on the application or bid; (2) evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or bidder, and are the only heirs or devisees of the deceased; and (3) a statement over the signature of each heir or devisee concerning citizenship and holdings.

(b) Where the executor or administrator has been discharged or no probate proceedings are required: (1) a certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or bidder, and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and (2) a statement over the signature of each of the heirs or devisees with reference to citizenship and holdings, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

§3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under §3420.1-4 of this title, a public body shall submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy within the next 10 years solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine, a municipality shall submit with its application:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To qualify to bid for a lease on a tract of acquired land set apart for military or naval purposes, a governmental entity shall submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its own governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased are located.

(d) If the material required in paragraphs (a), (b), or (c) of this section has previously been filed, a reference to the serial number of the record in which it has been filed, together with a statement as to any amendments, shall be accepted.

Subpart 3473—Fees, Rentals, and Royalties

§3473.1 Payments.

§3473.1-1 Form of payment.

Payments shall be made in cash, or by money order, check, certified check, bank draft, or bank cashier's check payable to the Bureau of Land Management or Geological Survey, as appropriate.

§3473.1-2 Where paid.

(a) Payments for all licenses to mine shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(b) Payments of all rentals for non-producing leases shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(c) Rentals and royalties on producing leases shall be paid to the Geological Survey Mining Supervisor for the area in which the lands under lease are situated.

§3473.1-3 When paid.

First year's rental for preference right leases shall be remitted at the time of filing the applications. First year's rental for competitive leases shall be payable when required by decision. Thereafter, rental for all leases shall be paid in accordance with the lease provisions.

§3473.2 Fees.

§3473.2-1 General fee provisions.

A filing fee of \$250.00 must accompany each application for an emergency lease, exploration license, and lease modification. A filing fee of \$50.00 must accompany each application for approval of any transfer of a lease or an interest therein. The fee shall be retained as a service charge even if the application is rejected or withdrawn, in whole or in part. An application not accompanied by the filing fee will not be accepted for filing; it will be returned to the applicant without action.

§3473.2-2 Exemptions from fee provisions.

No filing fee is required for:

(a) Licenses to mine to relief agencies as described in subpart 3440 of this title; or

(b) Preference right lease applications.

§3473.3 Rentals and royalties.

§3473.3-1 Rentals.

(a) The annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3.

The amount of the rental will be specified in the lease.

(b) Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the production or advance royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments may not be credited against royalties.

§3473.3-2 Royalties.

(a)(1) Royalty rates shall be determined on an individual case basis prior to lease issuance and upon lease readjustment. For competitive leases, initial royalty rates shall be set out in the notice of lease sale.

(2) A lease shall require payment of a royalty of not less than 12½ percent of the value of the coal removed from a surface mine.

(3) A lease shall require payment of royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(4) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

(b)(1) The Mining Supervisor shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year.

(2) The advance royalty for each lease shall be based on a percentage of the value of a minimum number of tons of coal, and the percentage shall not be less than the percentage prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the approval date of the LMU mining plan of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

(3) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment. No payment of an advance royalty during the first 20 years of a lease issued after August 4, 1976, may be used as credit against production royalty due after the 20th year of that lease.

(4) The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

(c) An overriding royalty interest shall not be created by a lease transfer, surface owner consent, or otherwise (1) that exceeds 50 percent of the rate of royalty first payable to the United States under the lease or (2) that, when added to any other overriding royalty interest, exceeds that percentage. Where an interest in the leasehold or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management that he has made substantial investments for improvements on the land covered by the transfer that would justify a higher payment.

(d)(1) In order to encourage the greatest ultimate recovery of coal, and in the interest of conservation, the Secretary, whenever he determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms may waive, suspend, or reduce the rental or minimum royalty, but not advance royalty, or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof, except that in no case shall the royalty be reduced below 12½ percent for surface mined coal, or 5 percent for underground coal.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the Mining Supervisor. The application shall contain the serial number of the lease, the Bureau of Land Management State Office, the name of the record title holder and any operator or sublessee, and the description of the lands in the manner provided by § 3471.1 of this title.

(i) Each application shall include the number and location of the mine, a map showing the extent of the mining operations, a tabulated statement of the coal mined and subject to royalty for each month covering a period of not less than 12 months immediately prior to the date of filing of the application, and the average production per day mined for each month, with complete information as to why the minimum production or continued operation requirement was not met.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of coal, and all facts indicating whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any.

(iii) The applicant shall also file a copy of agreements between the lessee and the holders of any royalty interests to a permanent reduction of all other royalties from the leasehold so that the total royalties owed the holders of royalty interests will not be in excess of one-half of the Government royalties, should the royalty reduction be granted.

§ 3473.4 Suspension of operations, production, and payment obligations.

(a) Application by a lessee for relief from any operating and producing requirements of a lease shall be filed in triplicate in the office of the Mining Supervisor. By Department Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Mining Supervisor is authorized to act on applications for suspension of operations or production, or both, filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term in accordance with any direction or assent of the Mining Supervisor.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Mining Supervisor. Rental and minimum royalty payments will be suspended during such period of suspension of all operations and production, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of the lease month, rental and minimum royalty payments shall be suspended beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary in the interest of conservation.

(e) A suspension under this section shall not be granted on a lease issued after August 4, 1976, on which the lessee has not met its diligent development obligations unless administrative action caused the lessee's delay or failure to comply with those obligations.

Subpart 3474—Bonds

§ 3474.1 Bonding requirements.

(a) Before a lease or license to mine may be issued, one of the following forms of compliance bond shall be furnished:

- (1) Corporate surety bonds;
- (2) Cash; or

(3) Personal lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney executed on a form approved by the Director.

(b) The applicant or bidder shall file the compliance bond in the proper office within 30 days of receiving notice. An original bond shall be furnished on a form provided by the Director.

(c) The period of liability for the compliance bond shall not be terminated until the lease account is in good standing.

(d) The bonding obligation for a new lease may be met by an adjustment to an existing bond covering another lease within the same logical mining unit.

§ 3472.4 Type of bond required.

(a) A compliance bond lease or license to mine, conditioned upon compliance with all provisions of the lease or license to mine except reclamation, shall be furnished in the amount determined by the authorized officer. The amount of the bond may be changed if the authorized officer considers such a change to be proper and necessary.

(b) A reclamation bond may be required in accordance with 30 CFR Part 742.

(c) For exploration licenses, a compliance bond must be furnished in accordance with § 3410.3-7 of this title.

§ 3474.3 Qualified sureties.

The authorized officer will notify those leaseholders who have nationwide or statewide bonds at the time of issuance of this subpart of the requirement to secure a separate compliance bond for each lease in the amount determined by the authorized officer to be proper and necessary. A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-14) as acceptable sureties on Federal bonds is published annually in the FEDERAL REGISTER.

§ 3474.4 Default.

When the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

Subpart 3475—Lease Terms

§ 3475.1 Duration of leases.

Leases shall be issued for a period of 20 years and so long thereafter as the condition of continued operation is met. If the condition of continued operation is not met the lease will be cancelled as provided in § 3452.2 of this title.

§ 3475.2 Dating of leases.

(a) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. However, upon receipt of a prior written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(b) Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3475.3 Land description.

Compliance with § 3471.1 of this title is required.

§ 3475.4 Diligent development and continued operation.

(a) Each lease shall require (1) diligent development, and (2) either (i) continued operation except when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty as described in § 3473.3-2(b) of this title.

(b) For coal leases issued before August 4, 1976, the 10-year period for achieving diligent development may be increased as follows:

(1) Upon application by the lessee, the 10-year period shall be extended by an amount of time equal to the period during which diligent development is, in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In determining whether any of the conditions listed in

subdivisions or (i), (ii), (iii) of this paragraph occurred and whether one or more of those conditions did, in fact, significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under subdivision (iii) any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application by the lessee, the Secretary may grant one extension, not exceeding five years, of the 10-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the magnitude of the project (ordinarily magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the 10-year period. Regardless of the reason for granting an extension, the lessee shall produce the first one-fortieth of the LMU reserves before the end of the extended term.

(c) At the time when the Secretary grants an extension under paragraphs (a) and (b) of this section, the lessee shall be notified of the revised date by which coal shall be produced in commercial quantities.

§ 3475.5 Logical mining unit.

(a) Criteria for approving or direct establishment of an LMU are found in 30 CFR 211.80. Each lease shall automatically be considered to constitute an LMU on the effective date of the lease or June 1, 1976, whichever is later. The lease LMU may, at a later date, be enlarged by the addition of other Federal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease shall become effective only at the direction of the Mining Supervi-

sor, or by designation during the normal tract delineation phase of the coal activity planning process, or upon its approval by the Mining Supervisor when requested by the lessee. The Mining Supervisor shall not direct or approve the establishment of such an LMU unless it is determined that the maximum economic recovery of all Federal coal deposits in the LMU will be achieved. The boundaries of an LMU may later be changed either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer, or by direction of the Mining Supervisor after consultation with the authorized officer.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the lease shall be amended so that they are consistent with the requirements imposed on the LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be considered to have occurred on each Federal lease in the LMU. The rental and royalty payments of all Federal leases in an LMU shall be combined, and advance royalties paid on any Federal lease in that LMU may, at the request of the lessee, be credited against those combined royalties.

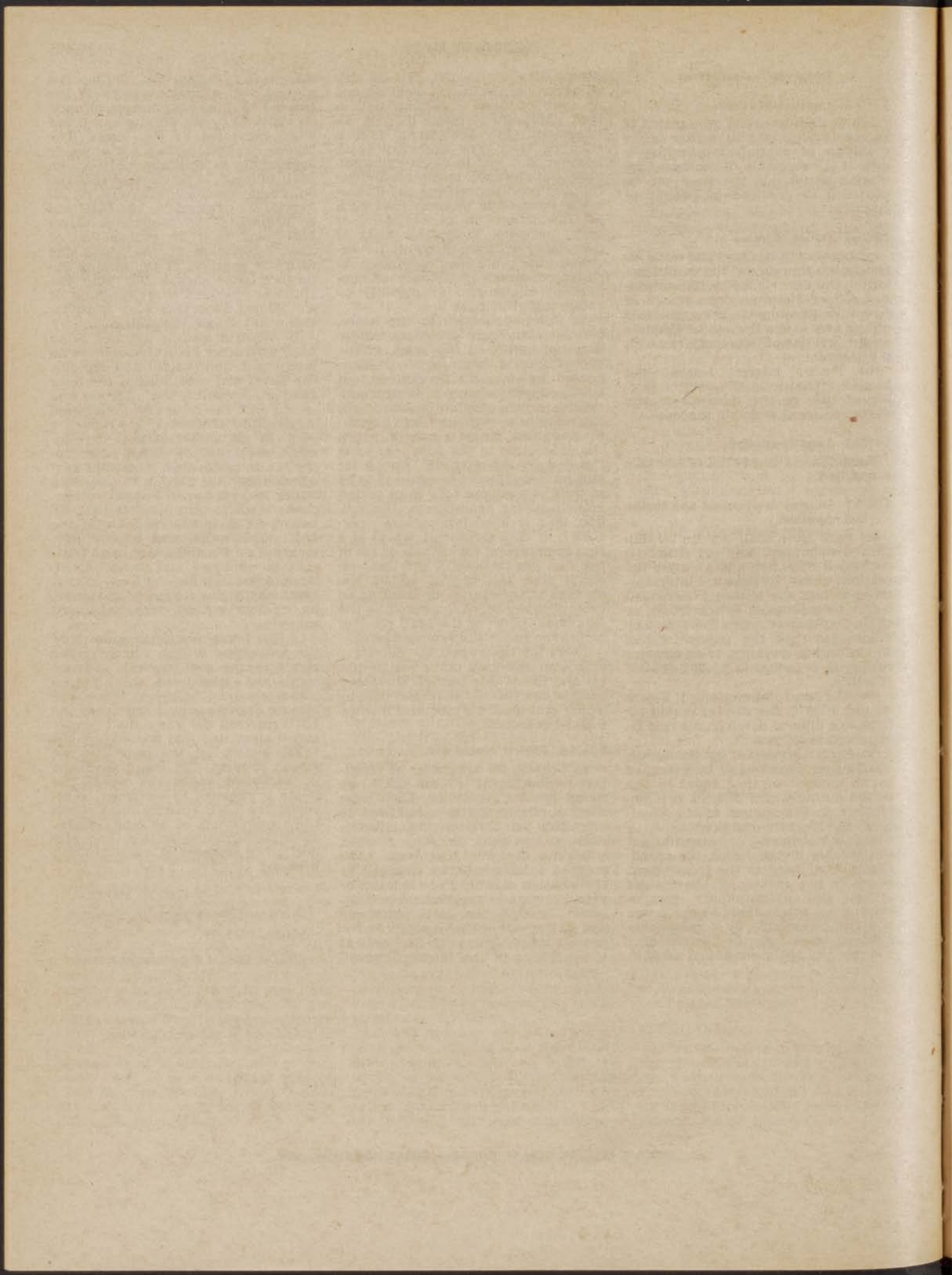
(c) The lessee may, upon approval of the authorized officer, surrender the rights to any coal deposits. If these rights are surrendered, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, the lessee shall be consulted about any coal deposits subject to the lease which the lessee does not intend to mine. The lessee shall also be consulted about the rights the lessee is prepared to surrender to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

GUY R. MARTIN,

Assistant Secretary of the Interior.

MARCH 13, 1979.

[FR Doc 79-8111 Filed 3-16-79; 8:45 am]



Registered
Federal

MONDAY, MARCH 19, 1979

PART IV



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

**Office of Assistant
Secretary for Housing—
Federal Housing
Commissioner**

■

**PUBLIC HOUSING
AGENCY (PHA)
MANAGEMENT OF
SECTION 8 EXISTING
HOUSING PROJECTS**

Final Rule

[4210-01-M]

**Title 24—Housing and Urban
Development**

**CHAPTER VIII—LOW-INCOME HOUS-
ING, DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT**

[Docket No. R-79-475]

**PART 882—SECTION 8 HOUSING AS-
SISTANCE PAYMENTS PROGRAM—
EXISTING HOUSING**

**Public Housing Agency (PHA)
Management**

AGENCY: Office of the Assistant Sec-
retary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule will permit a public housing agency (PHA) to perform management services for a Section 8 Existing Housing project, even though the PHA is also administering the Housing Assistance Payments Contract for that project. The present regulations prohibit a PHA from serving in both capacities. The change was made possible by a 1977 statutory amendment.

EFFECTIVE DATE: April 18, 1979.

**FOR FURTHER INFORMATION
CONTACT:**

Patricia Arnaudo, Acting Director,
Existing Housing Division, Office of
Existing Housing and Moderate Re-
habilitation, Department of Housing
and Urban Development, 451 Sev-
enth Street SW., Washington, D.C.
20410, (202) 755-6460. This is not a
toll-free number.

SUPPLEMENTARY INFORMATION:
On November 2, 1977 (at FR 57416)
the Department published a rule pro-
posing to amend the Section 8 Exist-
ing Program Regulations regarding
PHA management. Although this pro-
posed rule was published together
with a proposed rule regarding con-
versions of Section 23 units to the Section
8 program, the final rules are being
published separately.

The Department received 13 written
comments in response to the proposed
rule on PHA management and numer-
ous other suggestions from PHAs and
others, all of which have been care-
fully considered in preparing this final
rule.

**SUMMARY OF RULE PROPOSED ON
NOVEMBER 2, 1977**

The Department proposed to allow
PHA's to perform management func-
tions on behalf of owners of Section 8
Existing units even though the PHA

administers the Housing Assistance
Payments Contract for those units.
This was done pursuant to Section
201(e) of the Housing and Community
Development (HCD) Act of 1977 which
amended Section 8(d) of the U.S.
Housing Act of 1937 to authorize the
Secretary to approve PHA manage-
ment in these cases. HUD proposed to
implement the PHA management pro-
visions on a demonstration basis in lo-
calities where documentation by the
PHA shows that performance of these
functions by the PHA would be neces-
sary to provide housing for eligible
families particularly very low-income
or large lower-income families.

ELIGIBILITY FOR PHA MANAGEMENT

PHA's which commented on this
proposed rule objected to the limited
implementation of the PHA manage-
ment provision, particularly the em-
phasis on using this provision to pro-
vide housing for very low-income or
large lower-income families. Also, the
PHA's felt that restricting PHA man-
agement to a demonstration would not
reflect the intent of the 1977 amend-
ment. In addition, many of the PHA's
which commented felt that to permit
PHA management would provide a
major incentive to Section 23 owners
to convert from the Section 23 pro-
gram to Section 8 especially where the
current leases under the Section 23
program provide for the management
and maintenance functions to be per-
formed by the PHA.

Under the final rule, PHA manage-
ment will not be restricted to a demon-
stration. HUD Field Offices will be au-
thorized to approve PHA management
in any case where the PHA demon-
strates that it is necessary to provide
housing for eligible families, including
but not limited to very low-income or
large lower-income families, or that it
would provide an incentive for conver-
sion from the Section 23 to the Sec-
tion 8 program. In addition, the PHA
must demonstrate that it has or will
have the capability to perform ade-
quately the management function for
the units as proposed in the applica-
tion to HUD, taking into consideration
the relevant characteristics of the
housing and the families, e.g., scat-
tered site or multifamily projects and
elderly, handicapped or families with
children.

MANAGEMENT CONTRACT

Those PHA's which commented on
the management function indicated
that they would need additional fees
from HUD to perform these manage-
ment functions rather than relying on
a fee from the owner.

The owner of a Section 8 Existing
Housing unit has the responsibility for
performing these functions pursuant
to § 882.117, and the owner's compen-

sation for performing these responsi-
bilities is included in the Contract
Rent. Therefore, if the owner wants
the PHA to perform his management
functions, the owner must pay the
PHA from the Contract Rents, and
the PHA may not look to HUD for any
payments in this respect.

The Department has added other
provisions with regard to the manage-
ment contract. First, the term of the
proposed management contract shall
be limited to one year in order that
the parties and HUD may evaluate the
effectiveness of such a contract and
renew it from year to year if justified.
For similar reasons, the contract shall
include a clause which will allow
either party to terminate the contract,
or HUD to require termination of the
contract on 90 days advance written
notice.

Second, the Regulations permit
flexibility in the scope of management
services performed by the PHA, based
on the needs of the owner and the ca-
pabilities of the PHA.

Third, the compensation to the PHA
shall be in the form of a fixed fee to
cover all routine management services
including routine legal services, and
local travel. Costs of non-routine re-
pairs and replacements, taxes, insur-
ance and utilities and other non-rout-
ine items shall be paid by the owner
to the PHA in addition to the fixed
fee.

Fourth, the amount of the manage-
ment fee shall be negotiated between
the owner and the PHA and approved
by HUD. The fee shall be specified as
dollars per unit rather than a percent
of Contract Rent in order to avoid any
financial incentive to the PHA which
would result if the amount of the fee
were a percentage of the Contract
Rent. In addition, the fee must be suf-
ficient to compensate the PHA for the
cost of providing the services, includ-
ing the pro rated fair share of all indi-
rect and overhead costs so as to assure
that the costs of this management
function are not shifted to other HUD
assisted programs.

The fee shall also be shown to be
reasonable when compared with fees
paid to private firms in similar man-
agement situations, such as manage-
ment of Section 8 Existing units and
PHA projects.

PHA's shall keep separate accounts
and records on the PHA management
functions.

Finally, because of the close rela-
tionship between the PHA and the
units in question, § 882.117(c)(4) pro-
vides that the PHA may not approve
Contract Rents above Fair Market
Rents under §§ 882.106(a)(2) and
882.120(b) without prior HUD approv-
al.

HUD MONITORING

Since the PHA will be managing the units for which it also functions as a contract administrator and will thus be in the position of supervising and evaluating its own activities, the rule emphasizes that HUD monitoring shall include inspections of the units and other reviews sufficient to enable the Field Office to determine whether there is compliance by the PHA and the owner with the terms and conditions of the ACC and the Contract.

NATIONAL ENVIRONMENTAL POLICY ACT

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 882 is amended as follows:

1. Section 882.117(b) and (c) is revised to read:

§ 882.117 Responsibilities of the owner.

(b) Any owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: *Provided*, That such a contract shall not shift any of the owner's responsibilities or obligations.

(c) Where an owner and a PHA wish to contract for management by the PHA of units under Housing Assistance Payments contracts which are administered by the PHA pursuant to an ACC, the PHA shall submit an application to the Field Office requesting HUD approval.

(1) *Application requirements.* The application by the PHA to HUD shall be accompanied by a copy of the proposed management contract and supported by documentation showing that:

(i) Performance of the management functions by the PHA is necessary to provide housing for eligible families, including but not limited to very low-income or large lower-income families or that it would provide an incentive for conversion from Section 23 to the Section 8 program;

(ii) The PHA has or will have the capability to perform adequately the management functions for the units as proposed in the application taking into consideration the relevant characteristics of the housing and the families, e.g., scattered site or multifamily projects and elderly, handicapped, or families with children; and

(iii) The management contract meets the conditions of paragraphs (c) (2) and (3) of this section.

(2) *Contract term.* The term of a proposed management contract shall be limited to one year in order that the parties and HUD may evaluate the effectiveness of such a contract and renew it from year to year if justified. For similar reasons, the contract shall include a clause which will allow either party to terminate, or HUD to require termination of, the contract on 90 days advance written notice.

(3) *Management fee.* The compensation to the PHA shall be in the form of a fixed fee to cover all routine management services including routine legal services and local travel. Costs of non-routine repairs and replacements, taxes, insurance and utilities and other non-routine items shall be paid by the owner to the PHA in addition to the fixed fee. The amount of the fixed management fee shall be negotiated between the owner and the PHA and approved by HUD. The fee shall be specified as dollars per unit rather than a percent of Contract Rent in order to avoid any financial incentive to the PHA which would result if the amount of the fee were a percentage of the Contract Rent. The fee shall be sufficient to compensate the PHA for the cost of providing the services, including the pro rated fair share of all indirect and overhead costs so as to assure that costs of this management function are not shifted to other HUD assisted programs. The fee shall also be shown to be reasonable when compared with fees paid to private firms in similar management situations, such as management of Section 8 Existing Housing units and FHA projects.

(4) *Contract rents.* Notwithstanding the provisions of §§ 882.106(a)(2) and 882.120(b), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Fair Market Rent for a unit for which it provides the management functions under this section.

(5) *HUD review responsibilities.* HUD recognizes that under this section the PHA will be managing the units for which it also functions as a contract administrator and will thus be in the position of supervising and evaluating its own activities. Accordingly, in addition to the PHA's responsibilities pursuant to §§ 882.116(c) and 882.211(b), the HUD Field Office shall make such reviews of project operations including inspection of units as are sufficient, in frequency, nature and extent, to assure that the owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC.

(6) *PHA Records.* PHA's shall keep separate accounts and records of their activities in performing the management functions pursuant to this § 882.117.

2. Section 882.121(c)(1) is revised to read as follows:

§ 882.121 HUD administration of programs under this part.

(c)(1) If the PHA owns housing which is suitable for utilization under this Part, HUD shall ascertain whether there is another PHA able and willing to enter into an ACC and administer the program under this Part with respect to housing which is owned by the first PHA. If so, such an ACC may be entered into, and the housing covered thereby shall be excluded from the ACC with the first PHA.

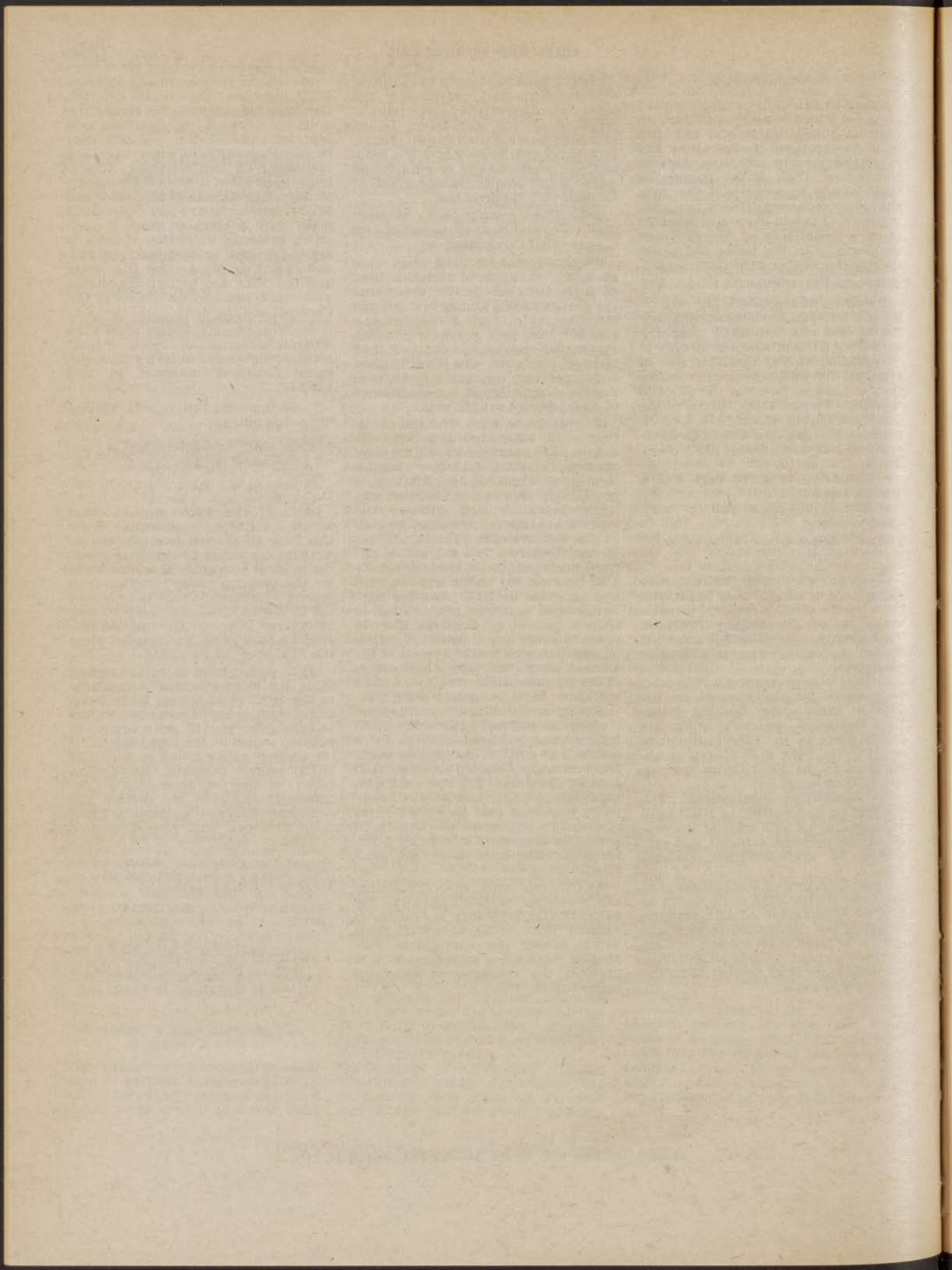
(2) If, on the basis of inquiry and all other pertinent information available to the HUD Field Office, HUD determines there is no PHA able and willing to administer an ACC with respect to housing owned by the first PHA, HUD (or another entity acting on behalf of HUD) may, pursuant to Section 8(b)(1) of the Act, enter into a Contract with the PHA and perform the functions otherwise assigned to PHAs under this part with respect to such housing.

(Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b), U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).)

Issued at Washington, D.C. March 8, 1979.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc. 79-8140 Filed 3-16-79; 8:45 am]



Register
of
Proposed
Rules

MONDAY, MARCH 19, 1979

PART V



**DEPARTMENT OF
COMMERCE**

**National Oceanic and
Atmospheric
Administration**



**COASTAL ENERGY
IMPACT PROGRAM**

**Proposed Administrative
Procedures for Implementation**

[3510-08-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[15 CFR Part 931]

COASTAL ENERGY IMPACT PROGRAM

Proposed Rule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations describe administrative procedures for implementing Section 308(c)(2) of the Coastal Zone Management Act of 1972 as amended (Pub. L. 94-370; 16 U.S.C. 1451, et seq.). Section 308(c)(2) establishes the Outer Continental Shelf (OCS) State Participation Grant Program which provides financial assistance to coastal states to enable these states to participate effectively in policy, planning and managerial decisions relating to management of OCS oil and gas resources.

DATE: Deadline for submission of written comments: May 3, 1979.

ADDRESS: Send comments to: Dan Hoydysh, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Dan Hoydysh, (202) 634-4128.

SUPPLEMENTARY INFORMATION:

I. EXPLANATORY STATEMENT

The Coastal Energy Impact Program (CEIP) was created by the 1976 amendments to the Coastal Zone Management Act of 1972 (CZMA) (Pub. L. 94-370; 16 U.S.C. 1451, et seq.) and signed into law on July 26, 1976. The purpose of the CEIP is to provide coastal states and communities with financial assistance for mitigating the adverse impacts associated with OCS and other coastal energy development activity.

On September 18, 1978, the OCS Lands Act Amendments of 1978 (OCSLAA) (Pub. L. 95-372) were signed into law. Section 503 of the OCSLAA added to the CEIP a fund for the provision of grants to allow coastal states to carry out their responsibilities under the OCS Lands Act. The OCS State Participation Grant Program established under new Section 308(c)(2) of the CZMA provides up to 80% federally funded grants to coastal states likely to be affected by OCS energy activity. These grants are to be used by coastal states

to cover the administrative costs of participating in policy, planning and managerial decisions relating to the management and development of OCS energy resources. These grants are not to be used to cover any of the planning, public facility, public service, or environmental costs provided for in other provisions of the CEIP. The OCS state participation grants are authorized at a level of \$5 million a year for five fiscal years—fiscal year 1979 through fiscal year 1983.

II. SUMMARY OF MAJOR PROVISIONS OF THE PROPOSED REGULATIONS

Eligibility for Grants. Under section 308(c)(2) the Assistant Administrator for Coastal Zone Management is authorized to make up to 80% federally funded grants to coastal states likely to be affected by OCS energy activity. Only those states eligible to receive CEIP assistance may receive a 308(c)(2) grant.

Affected State. A coastal state will be considered likely to be affected if:

(1) That state has been designated as affected by the Department of the Interior for any OCS lease sale that has taken place or is scheduled to take place under the five-year leasing program; or

(2) That state is found by the Assistant Administrator to have administrative, policy, operational or managerial responsibilities under the OCS Lands Act that should properly be supported with section 308(c)(2) funds.

Allowable Uses of Grants. Grants are to be used by the states to participate in the Federal policy, operational and managerial decisions relating to management of resources of the OCS. Specifically, these grants are intended to pay for state participation in, among others, the following activities—formulation of the OCS leasing program; reviewing and commenting on draft environmental impact statements prepared for OCS activities; commenting and making recommendations concerning development and production plans; and analyzing data transmitted to the state pursuant to the OCS oil and gas information program.

Section 308(c)(2) grants are not to be used to cover any of the planning, public facility, public service, or environmental costs provided for in other provisions of the CEIP.

Allotment of Available Funding. Funding available for state participation grants will be allocated among eligible coastal states by means of a formula designed to measure, to the maximum extent practicable, the actual administrative, policy, operational and managerial responsibilities faced by the affected states.

The exact allocation formula is not specified in the regulations because of the need to maintain program flexibil-

ity—i.e., the OCS leasing process is inherently uncertain and to specify a precise allocation formula decreases the ability of the program to respond to rapidly changing situations. However, the factors on which the allocation formula is based are specified in the regulations. The Assistant Administrator will submit the allotment formula to the affected states for review and comment before allotting funds.

The allotment formula will have the following elements:

(1) **Minimum Share.** Each eligible coastal state will receive an equal minimum share which, in the Assistant Administrator's judgment, assures a sufficient threshold of funds for effectively developing a capability to carry out its responsibilities under the OCS Lands Act. The amount of the minimum share will not exceed \$100,000.

(2) **Lease Sale Share.** After the minimum shares are subtracted from the total amount appropriated, 50% of the remaining funds will be allotted among eligible coastal states in proportion to the number of times a state has been designated an affected state for OCS lease sales that have occurred since July 26, 1976, or are scheduled by the Department of the Interior to take place under the five-year leasing program. The lease sale share recognizes that a state's responsibilities under the OCS Lands Act are directly related to the amount of leasing activity that will affect the state.

(3) **Formula Share.** The funds remaining after the lease sale share is apportioned will be allotted according to the following formula:

40%—on the basis of the length of the marine coastline and the coastal population along the marine coastline;

60%—in proportion to the number of acres leased since July 26, 1976, that affects a given state.

(4) **Maximum Share.** No state will receive more than 10% of the total amount appropriated in a fiscal year for Section 308(c)(2). Any excess funds obtained by reducing states to the maximum amount will be redistributed among the other states proportionately.

Application for Grants. An application for an OCS state participation grant must contain:

(1) A certification that the grant will be used by a state to carry out its responsibilities under the OCS Lands Act.

(2) A clear and concise description of the activities that will be funded and their associated costs.

(3) An explanation of how funds will be allocated among units of local government, to the maximum extent practicable, on a basis which is proportional to the need for administrative assistance. Applications must be sub-

mitted to the Office of Coastal Zone Management (OCZM) before the end of the fiscal year for which the allotment is made, otherwise the allotted funds will revert to OCZM at the end of that fiscal year.

NOAA is issuing these proposed regulations to implement the OCS State Participation Grant Program under Section 308(c)(2) of the CZMA. These rules are proposed under the authority of Sections 308 and 317, Coastal Zone Management Act.

NOAA has determined that publication of these proposed rules is not a major action significantly affecting the quality of the human environment and does not require preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969. NOAA also has determined that this document is not a significant regulatory action and does not require preparation of a regulatory analysis under Executive Order 12044.

These proposed regulations are subject to comment and modification. Written comments on the regulations should be submitted to Dan Hoydysh, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235.

In consideration of the foregoing, NOAA proposes to amend Part 931 of Title 15, Code of Federal Regulations, by adding Subpart L as set forth below.

R. L. CARNAHAN,
Acting Assistant Administrator
for Administration.

MARCH 2, 1979.

Subpart L—OCS State Participation Grants

- Sec.
931.140 General.
931.141 Definitions.
931.142 Objectives.
931.143 Eligibility for OCS State participation grants.
931.144 Allowable uses of OCS state participation grants.
931.145 Limitations.
931.146 Allotment formula.
931.147 Allotment among coastal states.
931.148 Reversion of allotted funds.
931.149 Application procedure and contents.

AUTHORITY: Sec. 308, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 95-372.

Subpart L—OCS State Participation Grants

§ 931.140 General.

This Subpart establishes administrative procedures for awarding OCS State Participation Grants under section 308(c)(2) of the Coastal Zone Management Act of 1972, as amended (CZMA). This Subpart states the objectives of providing these grants and their allowable uses and describes pro-

cedures for allotting among coastal States funds available under section 308(c)(2) and for applying for (c)(2) grants.

§ 931.141 Definitions.

(a) OCS Lands Act means the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-327).

(b) *Affected State.* (1) OCS state participation grants will be allotted only to States that the Assistant Administrator finds are *likely to be affected by OCS energy activity*. The Assistant Administrator will make this finding in light of NOAA's special concern for protecting the marine and coastal environment.

(2) The Assistant Administrator will find a coastal State *likely to be affected* by OCS energy activity in any fiscal year if that State:

(i) Is designated by the Department of the Interior (DOI) as an affected State for any OCS lease sale that has taken place since July 26, 1976, or is scheduled to take place under DOI's five year leasing program; or,

(ii) Is found by the Assistant Administrator to have administrative, policy, operational or managerial responsibilities under the OCS Lands Act that should properly be supported with section 308(c)(2) funds.

(c) *Coastal population.* The term *coastal population* refers to the population in units of general purpose local government that have jurisdiction over a State's marine coastline. The term includes population in coastal areas that are not organized into political subdivisions.

§ 931.142 Objectives.

The objectives of assistance under this Subpart are:

(a) To help coastal States carry out their responsibilities under the OCS Lands Act;

(b) To protect the nation's valuable coastal environmental and recreational resources by helping the States develop the capability to review and comment effectively on Federal decisions relating to OCS oil and gas activity.

(c) To encourage the rational and orderly development of OCS oil and gas resources by helping States develop a capability to participate effectively in the Federal policy, planning and managerial decisions relating to management of OCS oil and gas resources.

§ 931.143 Eligibility for OCS State participation grants.

(a) A coastal State is eligible for financial assistance under this subpart if it meets the basic eligibility requirements of Subpart C of this part.

(b) a unit of local government may apply to its State for assistance under this Subpart.

§ 931.144 Allowable uses of OCS State participation grants.

(a) OCS State participation grants are to be used by States to carry out their responsibilities under the OCS Lands Act. These responsibilities include participating in the administrative, policy, operational and managerial decisions relating to management of the resources of the Outer Continental Shelf. Specifically, the OCS grants are intended to pay for the state activities listed below:

(1) Cooperation with the Secretary of the Interior to enforce OCS related safety, environmental and conservation laws and regulations.

(2) Participation in hearings conducted by the Secretary of the Interior with respect to cancellation of OCS related leases or permits.

(3) Participation in hearings held by the Federal Energy Regulatory Commission (FERC) with respect to amounts of OCS oil or natural gas that will be transported ashore in pipelines.

(4) Participation in hearings held by FERC concerning the expansion of pipeline capacities by shippers of OCS oil or natural gas.

(5) Reviewing Federal actions significantly affecting the OCS or its development.

(6) Developing and implementing cooperative agreements with respect to the leasing of OCS lands immediately adjacent to state seaward boundaries.

(7) Participating in formulating the OCS leasing programs.

(8) Developing with the Department of the Interior cooperative agreements for sharing information, joint utilization of available expertise, facilitating permitting procedures, joint planning and review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to OCS operations both onshore and offshore.

(9) Cooperating with the Secretary of the Interior in carrying out environmental studies in any area included in any OCS oil and gas lease sale.

(10) Reviewing safety and other regulations that are prepared and promulgated by any Federal department or agency and applicable to the Outer Continental Shelf.

(11) Submitting comments and recommendations concerning OCS development and production plans.

(12) Reviewing and commenting on draft environmental impact statements on OCS activities governed by the OCS Lands Act.

(13) Reviewing, commenting on and analyzing any data transmitted to the

State by the Secretary of the Interior pursuant to the OCS oil and gas information program. This includes inspecting any privileged information received by the Secretary regarding any OCS activity adjacent to the State.

(14) Participating in OCS policy, scientific and technical advisory boards established by the Department of the Interior and other OCS-related meetings called by the Department of Energy, the National Oceanic and Atmospheric Administration, or any other Federal agency.

(15) Participating in training and information conferences on OCS-related issues sponsored by government, industry, environmental, academic or public interest groups, if such participation is directly related to carrying out a State's responsibilities under the OCS Lands Act.

(b) Paragraph (a) of this section does not represent an exclusive list of state responsibilities under the OCS Lands Act.

§ 931.145 Limitations.

(a) Section 308(c)(2) grants awarded to a coastal State may not exceed 80 percent of the actual cost of carrying out State responsibilities under the OCS Lands Act. States may use in-kind contributions as the non-Federal matching share in accordance with Office of Management and Budget Circular A-102.

(b) States may not use OCS State Participation Grants to cover planning, study, public facility, public service, or environmental protection costs provided for under other provisions of section 308.

§ 931.146 Allotment formula.

(a) The Assistant Administrator will establish a formula for allotting among coastal States funds appropriated for section 308(c)(2). The formula will consist of the following components:

(1) *Minimum Share.* Each eligible coastal State will receive an equal minimum share that in the Assistant Administrator's judgment assures each State a sufficient level of funding to develop an effective capability to carry out its responsibilities under the OCS Lands Act. The amount of the minimum share will not exceed \$100,000.

(2) *Lease Sale Share.* After the minimum shares are subtracted from the total amount appropriated, 50% of the remaining funds will be allotted among eligible coastal States in proportion to the number of times a State

has been designated an affected State for OCS lease sales that have occurred since July 26, 1976, or are scheduled by the Department of the Interior to occur pursuant to the five-year leasing program. The lease sale share recognizes that a State's responsibilities under the OCS Lands Act are directly related to the amount of leasing activity that will affect a State.

(3) *Formula Share.* The funds remaining after the lease sale share is apportioned, will be allotted according to the following formula:

40%—on the basis of the length of the marine coastline and the coastal population along the marine coastline;

60%—in proportion to the number of acres leased since July 26, 1976, that affect a given State.

(4) *Maximum Share.* No State will receive more than 20% of the total amount appropriated in a fiscal year for section 308(c)(2). Any excess funds obtained by reducing States to the maximum share will be redistributed among the other States in proportion to the number of acres leased since July 26, 1976 that affect a given State.

(b) Because of the difficulty in estimating accurately the need for OCS State Participation Grants the precise allocation formula is not specified in the regulations. The Assistant Administrator retains the discretion to alter the formula, within constraints imposed by this section, because of the uncertainty of lease sale schedules, exploration and production timetables, and the precise incidence and magnitude of actual impacts on an individual coastal State. Any formula that is used by the Assistant Administrator will be submitted to the coastal States for review and comment before final allotments are made.

§ 931.147 Allotment among coastal States.

(a) *Available Funds.* Funds available in a fiscal year for allotment under section 308(c)(2) will consist of:

(1) Funds appropriated for section 308(c)(2) in that fiscal year;

(2) Funds allotted in previous fiscal years under section 308(c)(2) reverting to the Assistant Administrator under § 931.148 because they were not applied for by the recipient coastal State in the fiscal year of allotment;

(3) Funds allotted in previous years for subsection 308(c)(2) purposes that are recalled under § 931.97 because

such funds were expended for unauthorized uses; and

(4) Funds from any other sources that may be used in that fiscal year for section 308(c)(2) purposes.

(b) *Allotment.* Sixty days before the beginning of each fiscal year the Assistant Administrator will provide each affected State the formula that will be used to allot section 308(c)(2) grants for the following fiscal year. The States will have 30 days to submit comments on this formula to the Assistant Administrator. Final allotments will be computed on or about October 1 of each fiscal year.

§ 931.148 Reversion of allotted funds.

(a) Funds allotted under this Subpart for which applications are not submitted by the end of the fiscal year in which the funds were allotted, will revert to the Assistant Administrator at the end of the fiscal year and will be reallocated in the following fiscal year.

(b) Funds that are not obligated by the recipient State in the fiscal year of allotment will revert to the Assistant Administrator at the end of the fiscal year.

§ 931.149 Application procedure and contents.

(a) Applications for OCS State Participation Grants may be submitted to the Assistant Administrator anytime after the final allotment is calculated.

(b) The Assistant Administrator intends to make grant awards within 45 days of receipt of a completed application.

(c) Applications for assistance under section 308(c)(2) must contain the following certifications and information:

(1) A certification by the Governor, or State agency designated by the Governor as responsible for administering the OCS State Participation Grant Program, that the assistance will be used to carry out the State's responsibilities under the OCS Lands Act.

(2) A clear and brief description of the activities that will be carried out including the associated costs.

(3) An explanation of how, to the maximum extent practicable, the financial assistance provided under this section will be apportioned, allocated, and granted to units of local government on a basis which is proportional to the extent to which the units need this assistance.

[FR Doc. 79-8206 Filed 3-16-79; 8:45 am]

MONDAY, MARCH 19, 1979

PART VI



**DEPARTMENT OF
TRANSPORTATION**

**Federal Aviation
Administration**



**LIGHT TRANSPORT
AIRPLANE
AIRWORTHINESS REVIEW**

**Invitation To Submit Proposals for
Consideration; Postponement of
Review Conference**

Registration Procedures

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 23, 25, AND 135]

[Docket No. 18800; Notice No. 78-17B]

LIGHT TRANSPORT AIRPLANE AIRWORTHINESS REVIEW

Invitation To Submit Proposals for
Consideration; Postponement of Review
Conference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice inviting interested persons to submit proposals and postponement of the Review Conference.

SUMMARY: This notice invites interested persons to submit comments and proposals for consideration at the Review Conference and announces postponement of the Review Conference.

Information relating to the objectives of this Review and additional information relating to this Conference are contained in Notice No. 78-17, "Light Transport Airplane Airworthiness Review" (43 FR 60846; December 28, 1978) and Notice No. 78-17A, "Light Transport Airplane Airworthiness Review Discussion Forum" (44 FR 7057; February 5, 1979).

DATES: Proposals must be received on or before July 9, 1979. The Review Conference will be postponed until September 1979. Conference details will be published in a subsequent FEDERAL REGISTER.

ADDRESSES: Send proposals in duplicate to: Federal Aviation Administration, Flight Standards Service, Airworthiness Review Branch (AFS-910), 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Thomas E. McSweeney, Airworthiness Review, Branch (AFS-910), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone: 202-755-8714.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 21, 1978, the Federal Aviation Administration (FAA) issued Notice 78-17 (43 FR 60846; December 28, 1978) announcing the Light Transport Airplane Airworthiness Review Program and announcing a Discussion Forum in March 1979 and a Conference in May 1979. On January 30, 1979, the FAA issued Notice 78-17A (44 FR 7057; February 5, 1979) announcing the dates of the Discussion

Forum and presenting the Forum schedule. A compilation of FAA proposals, announced in Notice 78-17, has been distributed to known interested persons.

Since the announcement of the Review Conference in May, the General Aviation Manufacturers Association (GAMA), in a letter dated February 27, 1979, requested a postponement of the Conference. GAMA stated that their engineering manpower resources were such that they could not commit a full time or even a substantial part time effort to develop counter proposals. They further stated that it would be beneficial for FAA to have the written proposals prior to the Review Conference. This, they said, would enable the FAA to develop a better NPRM in a much shorter time, public comment on the NPRM would be far less extensive, and the time to publish the final rule would be shortened.

In light of this request, the agency has concluded that it is in the public interest to postpone the Conference until September 1979 and require that industry proposals be submitted to the FAA on or before July 9, 1979.

SCOPE OF THE REGULATORY REVIEW

The scope of the Light Transport Airplane Airworthiness Review Program is limited to those proposals which are appropriate for the development of airworthiness standards for multiengine airplanes having a suggested maximum of about 30 passenger seats, excluding any pilot seat, and with a gross weight of about 35,000 pounds. Existing airworthiness standards for Part 23 and 25 category airplanes and appropriate portions of Appendix A of Part 135 serve as a foundation for the Part 24 proposals. However, new or additional standards believed to be appropriate are within the scope of the review and should be submitted.

PUBLIC COMMENTS AND COUNTER PROPOSALS

Interested persons are invited to submit comments and counter proposals they deem appropriate within the scope of the regulatory review. Persons submitting counter proposals should submit separate comments describing in detail why the parallel FAA proposals are considered unacceptable. All comments and counter proposals should be in the format described in the Appendix to this notice and should be submitted in duplicate to the above address. Comments and proposals must be received by the FAA on or before July 9, 1979. The FAA will prepare a compilation of public proposals which will contain all comments and counter proposals received as a result of this notice along with pre-registration forms for the

Conference. This compilation of public proposals plus any revisions and corrections to the compilation of FAA proposals will be mailed to known interested persons by August 6. Interested persons not receiving this material may request it at the above address. The compilation of public proposals and compilation of FAA Proposals will form the agenda for the Review Conference.

Proposals received in response to this notice will not necessarily appear in the compilation of public proposals. Proposals that are received too late, are beyond the scope of the regulatory review, do not follow the prescribed format, or lack the essential information outlined in the Appendix to this notice, may be excluded. Further, the FAA will exclude proposals that are not adequately justified, would require further research, or are not likely to generate fruitful discussion at the Conference.

CONFERENCE DATES

The Review Conference will be held in September 1979. Specific information about the dates and location of the Conference will be announced in a notice to be published in the FEDERAL REGISTER in April 1979. Included in the notice will be a discussion of the Conference agenda and procedures.

IMPROVING GOVERNMENT REGULATIONS

To implement the President's policy on improving government regulations, agencies must consider alternative ways to deal with a problem and an analysis of the economic consequences of each alternative. Thus, it is requested that each FAA proposal addressed and each proposal submitted be supported by available economic data relative to the costs and benefits of that proposal. Nonquantifiable impacts should also be stated as fully as possible.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), Sec. 6(c), Department of Transportation Act (49 U.S.C. 16555(c)).)

NOTE.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the "Department of Transportation Regulatory Policies and Procedures" published in the FEDERAL REGISTER February 26, 1979 (44 FR 11034).

Issued in Washington, D.C. on March 12, 1979.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

APPENDIX—REQUIRED FORMAT AND INFORMATION

The FAA has found during past Regulatory Review Programs that the

processing of regulatory proposals is greatly facilitated when they are submitted in standard format and contain certain basic information.

This Appendix contains a sample of the format that should be used and includes several clerical guidelines.

Each submitted proposal or comment on an FAA proposal should contain at least the following information (if no comments are submitted on a section the FAA will assume that section as proposed is acceptable):

(a) The full name or title of the proponent.

(b) The FAR section affected.

(c) The specific regulatory language proposed to attain the objective sought.

(d) The language of the rule or rules from which the proposal is made.

(e) An explanation and justification of the proposal, including answers to the following questions:

(1) What is the background?

(2) Why is the proposal necessary?

(3) What data, reports, records, etc., support the proposal?

(4) What is the probable impact (if any) on the environment, energy consumption, safety, and the traveling public.

(f) Each FAA proposal and submitted proposal should be assessed for its economic impact. This assessment should include a comparison of the costs (1979 dollars) associated with Part 23 (as modified by Appendix A of Part 135) and Part 25, the FAA proposal, and any submitted proposal. These costs should be identified by such categories as design, testing, production, operating, etc. Where appropriate, these costs should be further identified as initial (one-time), recurring, and revenue loss or gain.

When more than one proposal is submitted to attain the objective sought, the information in (e) above may be stated in one of the proposals and cross referenced in the others.

[4910-13-C]

FORMAT FOR PROPOSALS

The following format below should be used in developing proposals, counter proposals and comments for consideration during the Light Transport Airplane Airworthiness Review Conference. In addition, each proposal, counter proposals, or comments should be submitted on a separate page. The text should be within margins not more than 6-1/2 inches wide nor more than 9 inches long so that it can be printed on 8 x 10-1/2 inch paper.

SAMPLE FORMAT

Proposal: (Leave Blank)
 From: (Name or Organization)
 Index: (Leave Blank)
 FAR: § 24.23(b)(2)
 Subject: Load Distribution Limits
 Current Rule: § 23.23, 25.23, (Part 135, Appendix A, if applicable)

(a) For Comments:

Explanation: [Explain the comment on the FAA proposal and include the following information:

- (1) What is the background?
- (2) What data, reports, records, etc., support the comment?
- (3) What is the probable impact of other environment, inflation, energy consumption, and the traveling public?
- (4) What is the economic impact affecting the manufacturer, the operators or both? Where possible, this should consider the initial cost (one time), the recurring cost, and the estimated revenue loss or gain.]

(b) For Counter Proposals:

Revise § 24.23(b)(2) to read as follows:

§ 24.23 Load distribution limits.

* * * * *

(b) * * *

(2) [Insert proposed language here]

* * * * *

Explanation and justification: [Explain why the proposed change is necessary and, where applicable, include the following information:

- (1) What is the background?
- (2) Why is the proposal necessary?
- (3) What data, reports, records, etc., support the proposal?
- (4) What is the probable impact on the environment, inflation, energy consumption, and the traveling public?
- (5) What is the economic impact affecting the manufacturers, the operators, or both? Where possible, this should consider the initial cost, the recurring cost, and the estimated revenue loss or gain]

[FR Doc. 79-8157 Filed 3-16-79; 8:45 am]

Legislation
Federal

MONDAY, MARCH 19, 1979

PART VII



**DEPARTMENT OF
TRANSPORTATION**

Coast Guard



**OFFSHORE OIL
POLLUTION
COMPENSATION FUND
AND CLAIMS
PROCEDURES**

**Implementation of Title III, Outer
Continental Shelf Lands Act
Amendments of 1978**

[4910-14-M]

Title 33—Navigation and Navigable Waters**CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION****SUBCHAPTER M—MARINE OIL POLLUTION LIABILITY AND COMPENSATION**

[CGD 77-055]

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND**PART 136—OFFSHORE OIL POLLUTION COMPENSATION FUND CLAIMS PROCEDURES****Implementation of Title III, Outer Continental Shelf Lands Act Amendments of 1978**

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMMARY: These final regulations are required to implement recently enacted legislation which establishes an Offshore Oil Pollution Compensation Fund to be available for certain removal costs and damages caused by oil pollution arising in connection with Outer Continental Shelf (OCS) activities. The regulations are intended to convey to those persons affected by them the policies, uniform procedures, and administrative practices regarding the overall management and general operation of the fund.

EFFECTIVE DATE: March 17, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank A. Martin, Jr., Commandant (G-WDP/61), 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-2606.

SUPPLEMENTARY INFORMATION: These final rules are being promulgated under the authority of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372) (the Act) of September 18, 1978 and Executive Order 12123 of February 26, 1979 (44 FR 11199). Interested persons were invited to participate in the development of these rules by a notice of proposed rulemaking which appeared in the FEDERAL REGISTER issue of December 4, 1978 (43 FR 56840-55). In addition, the Coast Guard undertook a direct mailing of the proposed rules to known interested parties, issued press releases, and consulted with other Federal departments and agencies in the development of the proposed rules. Further, public hearings were held on the proposals in New Orleans, La. and Wash-

ington, D.C. on 4 and 8 January 1979 respectively.

In response to the invitation to comment, the Coast Guard received information and correspondence from over 60 respondents that contained slightly over 500 discrete comment items on the proposed rules. All comments received have been thoroughly evaluated and those within the scope of this rulemaking action have resulted in many changes which appear in the final rule.

A substantial number of comments were adopted, either in whole or in part, to the extent possible, and many were rejected. Except for editorial changes and as specifically discussed below, the final rules and the reasons therefor are the same as those given in the notice of proposed rulemaking. A discussion of all the issues raised in the comments received is impracticable and therefore only the most significant issues are discussed below.

Due to the need to use Parts 130 and 131 of Title 33 of the Code of Federal Regulations for other Coast Guard rulemaking projects, the final Offshore Oil Pollution Liability and Compensation regulations will appear in 33 CFR Parts 135 and 136. The final rules based on the proposals for Part 130 will be in Part 135 and those proposed as Part 131 will be in Part 136, even though the comments discussed below are keyed to the various sections proposed for Parts 130 and 131.

DISCUSSION OF MAJOR ISSUES**GENERAL COMMENTS**

One commenter suggested that the regulations require States to designate a contact point to receive copies of financial responsibility documents for all vessels and facilities operating in areas which might affect those States. Those documents would be used by the States to assist claimants in making determinations required by the regulations. The comment was rejected because to adopt such an approach would be duplicative and costly. Advertisement required by the regulations will provide claimants the name, address, and telephone number of the person or persons from whom claim information may be obtained.

One commenter asked that the proposed regulations be amended to apply to watercraft transporting diesel fuel and other oil products to offshore facilities. Such a request would expand the scope of the Act beyond the limits established by the definition of "vessel" and, therefore, cannot be accommodated by regulation.

Approximately 18 industry commenters have suggested that "royalty oil" be excluded from production in calculating the amount of fee to be paid by the "owner", arguing that the Federal government is a part owner of

OCS oil when it is produced. These commenters claim the Federal government is the owner of "royalty oil" at the time it is produced by virtue of the fact that the oil was taken in kind. Under OCS lease agreements (a copy of which appears in the FEDERAL REGISTER issue of September 29, 1978, 43 FR 44893-96) and regulations appearing in 30 CFR 225a.2(h), 250.20, 250.60 and 250.65, reference to "royalty and royalty oil" is an amount due the government in money or kind based on production removed from the lease. The royalty on crude oil, including condensate, is the percentage of the value or amount of crude oil produced. Thus, the Federal government is not part "owner" of the oil at the time it is produced. Because a large number of commenters raised this concern regarding "royalty oil" we have revised the final rule that levys the barrel fee, § 135.103(a). That section now specifically reflects that the per barrel fee applies at the time OCS oil is produced. The footnote to § 135.103 reflects our interpretation that the Federal government is not the owner of the oil at the time of production.

Several commenters from industry argued that either an increase in the ceiling price of OCS oil or a waiver of the restriction on selling such oil above the ceiling price be granted. It was recommended that the magnitude of such an increase or waiver be equal to the per barrel fee. One justification offered for such an action was that owners of pipelines and terminals will benefit from the Fund but will not contribute to its support. By treating the per barrel fee as a recoverable cost, all parties will be treated equally.

While such a justification may be valid, it should be pointed out, as has been recognized by the industry, that the Department of Energy (DOE) is the governmental entity tasked with review of such an issue. DOE has already established procedures to be followed to petition for this type of relief. Interested persons should consult 10 CFR 205. The Coast Guard has notified DOE of the concern expressed by industry with regard to this issue, but we stress that the burden of formal petition for administrative relief rests with industry.

One commenter pointed out that in our preamble to the proposed rules the discussion of the facilities covered by the Act for liability purposes did not specify that those facilities had to be located on the OCS. The Act clearly states that only those facilities located on the OCS are subject to the statute. Therefore, only facilities located on the OCS need comply with these regulations.

Numerous commenters requested that the regulations be clarified as to whether or not they apply to natural

gas production facilities and pipelines. The questions raised included whether facilities producing or transporting only natural gas and its condensate need apply for a certificate of financial responsibility and if the \$.03 per barrel fee must be paid on natural gas and condensate.

Several commenters assumed that natural gas and its condensate were not covered by the Act and suggested that the regulations should specifically exclude natural gas and condensate.

Several commenters said that natural gas and condensate do not constitute a threat to the environment if spilled and would not require any cleanup action. Because of this they suggested that the regulations should not apply.

One commenter suggested that if natural gas and condensate are subject to the regulations the minimal impact of a spill should be considered in determining the amount of financial responsibility that will be requested from these facilities.

After carefully examining all comments on this issue several changes to the regulations were made to make them more clear with respect to natural gas and condensate. These changes are reflected in the final rule at § 135.5 (b)(6), § 135.201(b)(7), and § 136.5 (b)(7). The Coast Guard is of the opinion that natural gas condensate, a liquid at atmospheric pressure and ambient temperature, is included in the definition of oil given in section 301 (13) of the Act. Natural gas itself is not oil. The extent to which a facility handling natural gas will be subject to the Act will depend on a factual analysis of the operation of the facility.

The acts of drilling for, producing, or processing natural gas will not, by themselves, require the owner or operator to establish evidence of financial responsibility. However, if the facility has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of condensate at any one time, then evidence of financial responsibility is required.

Since the condensate is considered to be oil, it is subject to the per barrel fee on all oil production, and a discharge of the condensate creates liability and a duty to notify in the same manner as a discharge of oil.

One commenter suggested that mobile offshore drilling units not be considered "offshore facilities" while drilling, because they are used for exploration rather than production and for drilling rather than handling (producing) oil. The legislative history of the Act clearly indicates that once a drilling ship or other watercraft is attached to the seabed for exploration, development, or production, it is to be considered an offshore facility under Title III. Furthermore, by definition

in the Act, "offshore facility" includes any drilling structure which is used to drill for oil produced from the OCS. Therefore, no changes in the proposed regulations were made in response to this comment.

The final regulations appearing in Part 136 apply only to claims against the Fund under the authority of section 307 of the Act. To extend the application of these regulations, or promulgate additional regulations, to cover claims against the owner, operator, or guarantor of the source of oil pollution, as suggested by several commenters, is beyond the authority of the Act. Furthermore, these regulations do not attempt interpretation or clarification of sections of the Act, such as section 304 (c), which are properly the province of the courts. Public access to information is not addressed in either the Act or these regulations; this subject is covered by existing law and regulations. Neither do the regulations provide for the representation of claimants as proposed by some commenters. The Act neither requires nor authorizes such government provided assistance although simple, and expedited, claims procedures are obviously contemplated.

Some concern was expressed by a number of commenters that the claims regulations, as proposed, did not provide sufficiently specific and detailed requirements and guidance. It remains our intent to promulgate the minimum regulations necessary to satisfy statutory requirements. To draft specific, detailed, regulations for every one of the myriad of potential situations which might occur is impossible. Such an approach, if possible, would likely allow little latitude for the exercise of judgment in the resolution of claims against the Fund, and probably would impose unnecessarily burdensome conditions on many claimants. The final rules regarding the compensation to be allowed reflect the minimum statutory requirements while allowing actual compensation to be made, on a case by case basis, based upon the conditions and circumstances of each individual claim.

A few commenters suggested changes or additions to the proposed claims rules that would impose, by regulation, restrictions on the actions of the Secretary, the Coast Guard, or the Fund Administrator, either beyond the scope of specific statutory requirements or simply not necessary for implementation of the Act. These, and comments addressed to internal administrative matters, were rejected as not proper subjects of rulemaking. The substance of many comments received from those who expressed concern regarding the supervision of the claims adjuster, while containing valid points, fall into this latter category

and were not adopted in the final claims regulations.

SPECIFIC COMMENTS

PART 130

Several commenters asked for guidance as to what constitutes an "unlawful quantity" of oil or an "unlawful rate" of discharge under the definition of "oil pollution" in proposed § 130.5 (a) and as regards notification requirements in proposed § 130.305, and whether that quantity is consistent with the quantities which may be established as "harmful" under the Federal Water Pollution Control Act (FWPCA). Unlawful quantities and unlawful rates are those established by any applicable statute or regulation, including any that may be established under the FWPCA. Since they are established under other statutes or regulations, attempting to define them in these rules is not appropriate.

Several commenters felt that the definition of when a mobile offshore drilling unit (MODU) is considered an offshore facility, proposed § 130.201(b)(1), was not adequate. Although the exact wording suggested was not used, the final definition, § 135.201 (b)(3), incorporates the substance of the comment.

Another commenter suggested including the term "spudding in" in the definition of MODU, to describe the moment a MODU is first considered an offshore facility. This suggestion was not adopted. Some operations conducted by MODU's do not require "spudding in". The same commenter suggested different language defining termination of operations. The suggested change was not adopted but the final rule in § 135.201(b)(3) was changed to clarify this point.

One commenter suggested that when a MODU is conducting operations at an existing offshore facility, it should be considered part of that facility. We agree, provided the MODU and the platform are under one ownership, and have provided for this in § 135.201(b)(4).

Numerous comments were received suggesting various methods of defining an "offshore facility" for the purpose of showing financial responsibility in Subpart C.

Several commenters suggested that each OCS lease be considered one offshore facility and that the lease owner should be made to show financial responsibility for all operations on that lease.

Several commenters suggested that proposed § 130.201(b)(3) be changed to include as part of a platform or structure all transfer or gathering lines within a given field upstream of custody transfer, noting that this would eliminate certification of a large number of short lines within a field.

Other commenters suggested that all structures within a given field, whether or not connected, should be considered an offshore facility.

One commenter suggested that all structures which are physically connected in any manner and which are all owned by one company or its subsidiaries be considered an offshore facility.

Several commenters suggested a "systems" approach to the definition of an offshore facility, utilizing either the point of custody transfer or the point where hydrocarbons are first separated, dehydrated, or otherwise processed as the end-point of the offshore facility.

Two commenters requested clarification of whether pipelines would constitute the type of physical connection required between structures to qualify them as a single offshore facility.

Several commenters suggested that segments of a pipeline system under one ownership be considered a single offshore facility.

The final rules in § 135.201(b) incorporate a systems approach to the definition of offshore facility which encompasses most comments. It allows an owner to group, within a field, all connected structures, including platforms and pipelines, into one facility up to the point of custody transfer. It also allows separate segments of a pipeline under one ownership to be considered as a single offshore facility.

A few commenters requested that we clarify under proposed Subpart C whether we intended the facility owner or the operator to apply for the Certificate of Financial Responsibility. The Act permits the owner or operator of the facility to show financial responsibility; we feel that either party may apply for a certificate. There is sufficient latitude for the parties to decide which one will apply. However, this does not affect the liability of either party under the Act. The final rule, § 135.204, clarifies who may apply for a certificate.

Several commenters asked that we further define the term "1000 barrels at any one time" in proposed § 130.203(a). One commenter suggested that we define it in terms of barrels per day, stating that this is the normal industry method of expressing such capacity. Our interpretation of section 305(b) of the Act where this term originated is that the Congress intended the term to mean the maximum volume of oil that could physically be contained in a pipeline at any specific moment in time. There is no indication in the legislative history that the volume of oil was to be related to barrels per day. Accordingly, this comment was not adopted.

Another commenter asked whether the term "1000 barrels of oil at any

one time", in proposed § 130.203(a), included refined and lubricating oils, not produced on the OCS. As long as an offshore facility is involved, section 305(b) of the Act does not limit the type of oil. Therefore, refined and lubricating oils are included.

By far, the largest amount of public comment received was directed at proposed § 130.203. Paragraph (c) of that section subjects insurers to establish evidence of financial responsibility in the amount of \$35,000,000 per facility. The comments indicated that, as the proposed section was written, there is not sufficient capacity in the insurance market to handle this type of a requirement and, if there were, the cost would be excessive. The increased cost or non-availability of insurance would have the greatest impact on small owners or operators who do not have the financial strength to self-insure.

We have reviewed and reassessed our proposed rules concerning coverage of multiple facilities in light of the above comments and the experience to date involving operations on the OCS. It is in the national interest to facilitate development of the energy resources on the OCS and the overall purpose of the Act is to further this goal. While there is undeniably some degree of increased risk of incurring liability as a result of an oil pollution incident if an owner or operator is involved with multiple facilities, data is not available to quantify the probable exposure. In our opinion the probability of simultaneous incidents is low. Since the owner or operator is required to *maintain* satisfactory evidence of financial responsibility, as well as establish it initially, we have decided to eliminate the proposed scale of financial responsibility limits for owners or operators of multiple facilities. Under the final rule, \$35,000,000 is the maximum amount for which evidence of financial responsibility must be established.

It was not our intent to unduly burden the owner or operator choosing insurance as the means to establish evidence of financial responsibility. The final rule in § 135.203, clarifies that, so long as the assets represented by the evidence of financial responsibility in whatever form, are available to satisfy the potential liability of an owner or operator for each facility intended to be covered by that evidence, the maximum amount required is \$35,000,000.

One commenter suggested that a provision be added to proposed § 130.203(b) to require replenishment of funds expended by a self-insurer to cover liabilities. It was suggested that otherwise a self-insurer's funds might be exhausted in response to an incident, and that damages resulting from subsequent incidents by that spiller

might not be fully compensated. Inclusion of such a provision is not considered necessary. The regulations require an owner or operator to establish and *maintain* evidence of financial responsibility in the amount for which a certificate is granted. This maintenance provision is sufficient to cover the instance just described. Further, the Fund Administrator will re-examine the financial capability of a certificate holder after each incident to ensure that the requisite amount of financial responsibility is maintained.

Numerous comments were received with regard to the problems that proposed § 130.203(e) imposed on joint venture operations. The intent of that paragraph was to reduce the number of individual applicants for a single certificate to just one. The major problem that the proposed rule created was to impose a system on the industry which provides for coverage of a facility as an entity rather than coverage for each proportionate owner of a facility as is current industry practice. Commenters also indicated that a policy of requiring one member to acquire the insurance would discriminate in favor of the large individual owner. We agree with the basic comments not to impose a new system when existing OCS insurance arrangements have worked reasonably well since 1953. The requirements covering submission of evidence of financial responsibility have been rewritten in a new § 135.204 which accommodates the existence of participating owners while preserving our intent to receive proof of financial responsibility from one source who will be responsible for application and changes affecting the application.

One commenter recommended the substance of proposed § 130.203(d) be placed in proposed § 130.215 on certification. The rationale for this recommendation was that the substance of that provision more properly belonged with the requirements governing certification rather than amount. We agree and have therefore deleted the requirement from proposed § 130.203(d) and added it as a new paragraph (g) in the final rule in § 135.215.

One commenter requested that in proposed § 130.207(a) we specifically show which insurers will be acceptable to the Fund Administrator. The final rule, § 135.207(a), now indicates the general types of insurance underwriters whose insurance for financial responsibility may be acceptable to the Fund Administrator.

One comment concerning termination of an insurance policy indicated problems with the way proposed § 130.207(c) would require an additional 30 days risk on a normal 12 month policy. The comment also indicated the final rule should be more clear regarding the difference between the

normal termination date of a policy and cancellation by the insurer before the termination date.

When a policy is self-terminating, i.e., at the end of 12 months, the certificate will be issued for the same period and thus be self-terminating also. The final rule in § 135.207(c) provides that less than 30 days notification will be allowed where alternate evidence of financial responsibility has been arranged or in those cases where a facility ceases the operations which caused it to be classified as a offshore facility under Subpart C. The final rule in paragraph (c) of §§ 135.209-.211 has also been worded similarly to § 135.207(c), to avoid the same problems regarding termination of the other methods of financial responsibility.

In light of the great distances involved and variety of insurance underwriters, two commenters requested that we accept confirmation of coverage from approved insurance brokers in lieu of individual signatures by the underwriters as indicated on the proposed application form. This confirmation would contain details of the insurance coverage arranged. Paragraph (e) has been added to the final rule in § 135.207 to allow this method of confirmation.

Several commenters indicated severe problems with the requirement in proposed §§ 130.207-.211 that insurers, guarantors, and sureties agree to be sued directly. Commenters stated that insurance policies are contracts of indemnity and do not lend themselves to direct action suits. The Act is very specific in this area. Section 305(c) states that any claim authorized by section 303(a) may be asserted directly against the guarantor providing evidence of financial responsibility for the owner and operator. Therefore, the requirement remains in the final rules. Other commenters asked that we include the defenses to a direct action. Since the defenses are provided by statute, there is no need to address them in the regulations.

A substantial number of commenters advised that retention of the requirement in proposed § 130.207(e) and § 130.209(g) concerning joint and several liability would virtually eliminate insurance and guaranty as methods of showing financial responsibility, particularly among the smaller owners and operators. The Act imposes joint and several liability on the owner and operators and provides that claims may be directly asserted against their guarantors. We did not intend to add any requirements beyond those contained in the Act. Therefore, the "joint and several" requirement has been deleted in the final rules, §§ 135.207 and 135.209.

A few comments indicated that a guarantee, as proposed in § 130.209, is not a viable method for showing financial responsibility because it would restrict the amount of the guarantor's financial assets. The commenters apparently have interpreted our guarantee to be a guarantee of indebtedness. The method of guarantee we have indicated may be defined as a "guaranty" where one party promises to make good on the failure of another who is liable. Until a pollution incident actually occurs, as in the case of a catastrophic spill, no asset of the guarantor has been impaired nor has any liability been incurred; in fact, the guarantor may even transfer this risk to an insurance company. Accordingly, we have changed all references to "guarantee" in § 135.209 to "guaranty".

Two commenters recommended that the guarantor under proposed § 130.209 be allowed other methods to show financial responsibility such as self-insurance or insurance. There is no reason why a guarantor may not use the same methods as an owner or operator; so long as this coverage protects the owner or operator. We agree with the commenters and their rationale with respect to this issue and have therefore revised the final rule on guaranty as evidence, § 135.209, to provide the same type of supporting documentation and insurance allowed under §§ 135.207, 135.211 and 135.213.

Several comments were made as to why we required, in proposed § 130.209 (b) and § 130.213(a)(2), a Certified Public Accountant to certify a statement of working capital. With consolidated balance sheets we are unable to determine if the amount of working capital of a subsidiary, which is requesting the admission of evidence of self-insurance, is sufficient to cover the amount required. If insufficient for a subsidiary, the parent corporation may guarantee or indemnify the subsidiary through their consolidated proof. We agree that statements of working capital and assets need not be signed by a CPA when non-consolidated balance sheets support these additional statements, or when the statements represent the full backing of the consolidated entity. The Treasurer of the company or equivalent official will suffice in certifying these statements when a CPA is not necessary. We have revised the Final rule, § 135.213, by adding a new paragraph (b) to clarify this point. The requirement was deleted in its entirety from proposed § 130.209 due to the other changes made to that section.

A number of commenters have advised us that traditional contractual relationships between the offshore drilling contractors and oil company operators involve the oil company operators providing an indemnity to the

drilling contractors for liability against oil pollution. In order to recognize this contractual relationship we have added a new § 135.210, to permit indemnity as a method of showing financial responsibility. This addition, however, in order to protect those that could be damaged, requires indemnitors to submit proof they are financially responsible. Indemnitors may provide the proof by any method recognized in § 135.205.

A few commenters stated that surety bonding proposed in § 130.211 is not a realistic method for establishing financial responsibility due to the cost. Although surety may be a costly method, we have not deleted this section in order to keep the surety option open for those companies who wish to buy the protection offered by a bonding company.

One commenter stated that in proposed § 130.213 (a) the words "Evidence of self-insurance * * * must be supported by * * *" suggest that some evidence other than that listed in the section may be required. Although we may need additional information in a specific case, § 135.215 (e) provides for that contingency. Under most expected normal circumstances the evidence explicitly required by the section for self-insurance will form a sufficient basis for determining whether to issue a certificate. We did not intend to imply otherwise.

Two commenters requested that we define "sufficient liquid assets" and "cash flow" as used in proposed § 130.213(a)(2), explaining that in the context used the intent of that paragraph was not clear. We have deleted reference to the term "sufficient liquid assets" in the final rules and rewritten the provision using more easily understood language.

One commenter suggested that proposed § 130.213(a)(1) be expanded to include foreign assets. The primary difficulty with including foreign assets is in the inability of the U.S. to gain control, if necessary, over the assets. Therefore, the suggested inclusion of foreign assets was not adopted.

With regard to this same section, other commenters advised that if we excluded foreign assets in the computation of working capital, we should also exclude foreign liabilities. In the final rule, § 135.213(a)(1), we have included clarifying language to indicate the paragraph was intended to apply to current U.S. assets and current U.S. liabilities only.

Several commenters advised that the requirement in proposed § 130.213(c) for filing of financial statements and 10-K reports at different time periods would create problems. They further advised that if a common 120 days after the financial period were adopted the 10-K report filed without the

other financial statements required by paragraph (a) of the section would be sufficient since the 10-K report contains most of that same financial data. We agree in part, and have therefore revised the paragraph, now paragraph (d) of § 135.213, to reflect that data submitted in the 10-K report need not be duplicated. This revision will result in reduced duplication and paperwork for those self-insurers who file 10-K reports with the Securities and Exchange Commission.

One commenter suggested that the phrase "The owner or operator or owner and operator of an offshore facility shall—" in proposed § 130.215(a) be changed to "Applicants shall—" and that the phrase "owner or operator of the offshore facility or an authorized representative" be eliminated from proposed paragraph (c) of that section because of definitional problems these phrases connoted. The commenter believed that such language could result in the erroneous interpretation that each owner or operator of a facility must show financial responsibility to the full \$35,000,000 amount. We agreed that this interpretation could occur and therefor adopted the commenter's suggestions in the final rule § 135.215 (a) and (c). We did not intend that a showing of financial responsibility for a facility having more than one owner exceed \$35,000,000.

A number of commenters pointed out that the date in proposed § 130.215 (a)(1) and (2), March 17, 1979, for submission of an application for a Certificate of Financial Responsibility was unrealistic. We acknowledged this might be the case; the notice of proposed rulemaking specifically requested recommendations for a time period sufficient to comply. The answers ranged from 30 days to 13 months. The principal reasons for the longer time period requested were to: (1) allow insurance policies, normally written for a 12 month period, to lapse and be renewed under the provisions of these regulations; (2) allow sufficient time for the completion of the insurance study required by section 305(d) of the Act; and (3) allow sufficient time for the Fund Administrator to establish operating procedures and forms for filing. We concur that the period for submission of applications needs extending and feel that six months is sufficient to accomplish the certification tasks. The Act requires as quick a response as possible. We have, therefore, revised § 130.215 (a)(1) and (2) (now § 135.215 (a)(1) and (2)) to reflect September 17, 1979 as the date by which applications must be filed with the Fund Administrator. We anticipate that the forms should be available from the Fund Administra-

tor or any Coast Guard District Office by June 1, 1979.

The 45 days lead time required in proposed § 130.215 (a)(2) before placing a facility in operation was considered excessive by many commenters. They felt the lead time may not allow for the contingency that a replacement mobile offshore facility may be required at short notice and a shorter lead time should therefore be allowed. The originally proposed 45 day lead time is considered necessary for reviewing original proofs of financial responsibility. Where a previously approved owner or operator is only adding additional facilities to be covered by evidence of financial responsibility previously submitted, regardless whether those additional facilities are mobile or fixed, the applicant will not be subject to the 45 day requirement. We have clarified our intent with respect to this issue by adding a new paragraph (a)(3) in § 135.215.

Several commenters expressed concern that duplicate submissions of evidence of financial responsibility would result from the way the proposed regulations in Subpart C were written. The commenters contended that this would result in a ponderous and costly certification process. Several other commenters requested we consider blanket certification of facilities and consolidated applications, to simplify the certification process, particularly where an owner owns more than one facility. The regulations have been revised and clarified to simplify the certification process.

The need to know each facility in existence on the OCS and who is financially responsible is evident. Adoption of a blanket certification process would not provide this needed information. However, once an owner or operator has established evidence of financial responsibility, this evidence need not be duplicated to cover the addition of other facilities if the established amount of financial responsibility is sufficient to cover additional facilities and applies to them. Notification through an application, of the additional facilities to be covered by the previously established evidence of financial responsibility is all that is required.

In addition, proposed § 130.217 regarding display of Certificates of Financial Responsibility has been deleted. Although the Act authorizes the proposed requirements, further examination of the problems involved and alternatives available has convinced us that they are not needed. Unlike vessels, facilities remain in place and they are not subject to the denial of entry and detention sanctions, which must be applied immediately to be effective. Verification of a facility's coverage by a Certificate of Financial Responsibility

can be accomplished through data compiled at Fund headquarters. Accordingly, the holder of a certificate may retain it at whatever location desired.

The former paragraph (c) of proposed § 130.217 has been moved to a new paragraph (f) under § 135.215.

One commenter criticized the requirement in proposed § 130.217(c) for not containing any standards or criteria regarding under what circumstances the holder or owner of a certificate would be required to surrender the certificate on demand. We have revised that paragraph (which now appears in § 135.215(f)) to include a reference to the standards enumerated in § 135.223.

Several commenters recommended changing the time period in proposed § 130.219 (a) to allow sufficient time to notify the Fund Administrator of changes which significantly affect the owner's or operator's financial position. There was also one comment as to what we mean by the term "significantly affect". We have changed the time period to 10 days, in § 135.219 (a), to allow sufficient time for a written notification. The reason for not extending the time to a 30 day period, as requested by several of the commenters, is that circumstances for which notification must be given are those which might affect the ability of the owner or operator to meet their liability under the Act, thereby exposing the Fund. This exposure should be as limited as possible, while giving the owners and operators a reasonable time in which to act. We believe that 10 days is appropriate. The term "significantly affect" is not used in the final rule since it is ambiguous.

Several commenters questioned the adequacy of the procedures in proposed § 130.223 (d) for review of actions to revoke Certificates of Financial Responsibility. Several asked for more time to respond to a notice of intent to revoke. Others asked that provisions for hearings and judicial review be added to the final rule and that the time periods in paragraph (c) and (d) of proposed § 130.223 be clarified. We basically agree with the commenters and have therefore revised § 135.223 to provide for a hearing process and to clarify the expression of time periods therein. That section also now addresses denials of certificates. Judicial review after final agency action is governed by section 309 of the Act.

Several comments were received in response to our request in the preamble to the proposed rules (page 56844) for specific comments on the draft application form. One commenter requested we clarify the type of choice of facility; delete "refinery", add "offshore production platform" (including

drilling operations); change "drilling structure" to "mobile drilling unit;" and clarify the meaning of first and second affidavits. The choice of facilities as proposed is agreeable. The purpose of the first and second affidavits is to allow for more than one type of evidence or more than one insurer, guaranty etc. to be presented. We did not intend to limit the number to only two because third, fourth, etc. attachments could be made.

Another commenter requested a line be provided for printing or typing the name under the signature and also room for the person's title. This space will be provided in the final form.

Several commenters requested we use forms similar to those of the Federal Maritime Commission. We have found through the hearings and comments that there is very little similarity in vessel and facility operations with respect to financial responsibility. Therefore, we feel we must design our own forms.

Other changes will be made to the draft forms, based upon the changes reflected in the final rules regarding multiple ownership, methods of insuring the individual proportional owner, and variety of facilities. Final forms should be available by June 1, 1979.

Several commenters felt that the occurrences listed in proposed § 130.303(a)(3) were inappropriate, either because they were too all-encompassing or because they did not include all possible occurrences. The examples of occurrences, with the exception of the term "weakness", were not changed since each of the listed types is likely to cause pollution or incur removal costs (as per section 304(a) of the Act) and, therefore, should be reported. The term "weakness" was deleted since this condition may not be readily apparent.

Several commenters stated that it was not clear that "occurrences which pose an imminent threat of oil pollution" were to be reported. These are specifically included in the definition of incident in section 301 of the Act. To clarify this, proposed § 130.305(a) (now § 135.305(a)) was revised to specifically include those occurrences.

Three comments dealt with notification procedures; two with dual notification problems under these regulations and 33 CFR Part 153, and one with a recommendation for a change in the order of priority. This section was written with 33 CFR 153.203 in mind and the requirements are essentially the same, the primary difference being the second notification option. In most cases in the Coastal Region, the predesignated On Scene Coordinator (as specified in the second option of 33 CFR 153.203) will be the same person listed in the second option of these regulations. Section 130.305 was

proposed in this manner to insure that notification would eventually reach the Fund Administrator. Proposed § 130.305(a)(1) (now § 135.305(a)(1)) was revised to show that this option is only available within the continental United States. A new paragraph (b) was added to this section to clarify the fact that notice submitted in accordance with this section also satisfies the requirements of 33 CFR Part 153.

Three commenters suggested adding to proposed § 130.305 rules requiring the Coast Guard to inform and provide copies of notification documents to concerned coastal States. Notification of all incidents is already being provided to the States under the FWPCA response program in which the States are closely involved. Other commenters suggested that the States be provided copies of the notice of designation under proposed § 130.309. However, this designation is subject to denial by the source. If the designation is denied, claims may be presented to the Fund. In either event, complete information as to the claim procedures to be followed in presenting claims will be advertised. For these reasons the suggested additional provisions concerning notifications of incidents and notification of designation were not adopted.

One commenter was dissatisfied with the process and procedure for denial of designation proposed in § 130.311. The Notice of Designation does not affix blame or establish liability. Its sole purpose is to identify an apparent source and those responsible for that source to undertake claim settlement procedures. When an apparent source denies designation or cannot be identified, the Fund will advertise and respond to claims, and seek reimbursement when actual liability can be established. In response to this and other comments, a new paragraph (c) was added to the final rule, § 135.311, to clarify the fact that a source who fails to deny designation does not necessarily incur liability for the spill.

Numerous commenters stated that the five day time period in proposed § 130.311(a) for denial of designation was too short. This provision comes from section 306(b)(2) of the Act and is not subject to alteration by implementing regulations.

Two commenters recommended alternative language for proposed § 130.313(a) which would more clearly indicate that advertisement may not be necessary for each incident. This recommendation was adopted, with minor editorializing, and now appears in § 135.313(a).

One commenter recommended that the designated source be allowed to negotiate advertising requirements and appeal the Commandant's decision. This was considered inappropriate

ate since prompt advertising is mandated by the Act; however, a new paragraph (b)(5) was added to § 135.313, to allow consideration of any information or recommendations submitted by the designated source.

One commenter suggested that proposed § 130.313 be revised to provide an upper limit of time and cost of required advertising. Section 306(d) of the Act establishes minimum time limits. Upper limits of either time or cost are not considered appropriate since advertising requirements must be determined by the circumstances of each incident. This comment was rejected.

One commenter suggested that proposed § 130.315 be revised to require a news release for each incident which is to be advertised. Another commenter suggested that size and format for newspaper ads should be specified. Neither of these suggestions was adopted. News releases may not be required for each individual incident, and thus should not be mandatory. To specify size and format of ads in the regulations is considered to be overly restrictive. This, as well as the particular section of a newspaper where the ad will appear, is one of the items which go into considering the "most effective means" as specified in § 135.313(b)(4).

One commenter suggested that the content of advertisement under proposed § 130.319(a) should require each advertisement to contain a warning to potential claimants concerning possible non-payment for claims resulting from negligent or intentional acts. This suggestion was not adopted because the purpose of advertisement is not to suggest whether claims are payable. Rather, the sole purpose of advertising is to advise potential claimants of claim procedures.

One commenter suggested that the term "provide access" appearing in paragraph (a) of proposed § 130.401 be changed to "permit access" since the cost of such access should not have to be incurred by the owner, operator, master or agent. We agreed and have made this change to the final rule in § 135.401(a).

Further, since we have deleted proposed § 130.217 in its entirety, for reasons discussed elsewhere in this preamble, and the requirements therein for the display of Certificates of Financial Responsibility at manned and unmanned offshore facilities, we have also deleted all reference to facility in § 135.401(a). That section now applies to access to vessels only.

SPECIFIC COMMENTS

PART 131

A number of revisions based upon comments received have been made to the claims rules proposed in Part 131.

In order to accommodate these revisions in the final rules, three additional terms, as defined in the Act, have been added to the definitions proposed in § 131.5(a). These new terms now appear in the final rule at § 136.5(a).

Several commenters suggested that the definition of "natural resources" in proposed § 131.5(b)(6) be expanded to include additional specific items; other commenters believed the definition was too broad and "open-ended". After review of these comments we concluded the definition is expansive enough to include all possible natural resources contemplated by the Congress (e.g. beaches, marshland, etc.) and yet restricted to those categories of natural resources contemplated. Accordingly, the suggested changes were rejected and the definition of "natural resources" in the final rule, § 136.5(b)(6), remains as proposed.

The time limitations in proposed § 131.101(a) reflect specific statutory provisions and were not changed. However, "may" has been changed to "will" to accurately denote Fund implementation of the statutory limitation. Proposed § 131.101(b) has been modified to remove an apparent inconsistency with proposed § 131.105(b). Proposed § 131.105(c) remains unchanged; the suggestion received that a claim be considered presented to the Fund on the date received by any other person is inconsistent with section 307(1) of the Act and was rejected.

For administrative convenience, and to obviate the need for two separate, essentially identical, groups of regulations on the same subject, § 136.103 requires federally authorized removal costs to be referred to the Federal Water Pollution Control Act (FWPCA) revolving fund. The Fund Administrator will subsequently reimburse the revolving fund. (The duties of On Scene Coordinators (OSC), with respect to oil pollution covered by the Act, remain unchanged; neither the Act nor these regulations change the existing authority and responsibility of the OSC under FWPCA, as amended, regarding oil pollution.)

The time proposed in § 131.109(b) for referral of unsettled claims has been increased to seven days in the final rule, § 136.109(b), to provide for five working days in most cases. This change is in response to several comments that indicated that five days was insufficient time. Since section 308 of the Act requires proof of the amount offered in settlement, the exclusion of material related to settlement offers has been dropped from the final rule.

Proposed § 131.115 has been substantially revised and expanded in order to include elements of proof omitted in the proposed regulations (as pointed

out in many comments) and to insure that all statutory requirements for claims are addressed by regulation. This section (now § 136.115) applies to all claims, and is in addition to particular items of proof required by Subpart C of Part 136 for specific types of claims. Several terms are used for which reference must be made to definitions of the Act. Section 136.115(a)(5) establishes a requirement that actions taken to avoid the loss be shown; this is in recognition of the limitations upon recovery of section 304(f)(2) of the Act. Paragraph (b) of section 304 of the Act reflects statutory requirements regarding cleanup costs.

Proposed § 131.127 (now § 136.125) regarding costs incident to claim preparation, which applies to all claims (including those for injury or destruction of natural resources) has been slightly revised to clarify that recovery will not be allowed for such costs, even if reasonable, if not necessary for the preparation of the claim. This is not to imply that recovery of such costs is to be limited or denied on the basis of amount alone, but that the claimant show that the expenditure was necessary as well as the amount reasonable. These changes are in response to commenters who requested clarification of this point.

Proposed § 131.207(a) has been revised in order to more clearly reflect all potential claimants in this category contemplated by the Act.

A new subparagraph (1) has been added to § 131.209(a) (other proposed subparagraphs are retained and renumbered) to include, specifically, the requirement for proof that property or natural resources have been injured or destroyed. The requirement (now in § 136.209(a)(3)) that the reduction of income be only a "consequence" of the injury or destruction is consistent with the Act; a stricter standard is not indicated by either the statutory language or the legislative history.

Proposed § 131.211(a) has been revised slightly in order to include all potential earnings or income which could be lost, as well as to distinguish between loss of employment and reduction in employment (loss or reduction of wages, only). Proposed § 131.211(c) has been deleted, as suggested by a comment, as superfluous.

No specific reference to the natural restorative process has been included in the final version of proposed § 131.215 because this is considered an integral part of determining actual injury and the calculation of economic loss suffered.

Proposed § 131.217 has been revised to eliminate reference to the undefined concept of "unit value" (which was strongly criticized in several com-

ments) and to add recognition of other economic loss which may occur.

No change has been made to proposed § 131.219; as written it is considered sufficiently broad to include all potential claimants, including subsistence users of natural resources.

The requirement that alternative sources of income be considered in determining compensation to be awarded as a result of loss of use of natural resources has been specifically added to proposed § 131.223, as suggested in some comments. This section is now consistent with other compensation sections, incorporating this reasonable condition upon any recovery while preserving the remedial intent of the Act.

The requirements in § 136.225 reflect the provisions of the Act and impose no special qualifications on claimants for cleanup costs. Such claimants are subject to the proof requirements of Subpart B and § 136.227 before any compensation can be awarded.

The requirement that compensable cleanup costs incurred be "reasonable" is imposed in § 136.229 (unchanged from the proposed rule) not to limit the types of costs recoverable (these are sufficiently and broadly defined in the Act) but to require that only the reasonable costs of such measures be compensable.

The intent of proposed § 131.305 is to provide general guidelines which permit the administrative law judge, or panel, to conduct proceedings, subject to the Administrative Procedure Act and these regulations, in the manner best suited to resolution of specific cases being considered. The word "proceedings" in proposed § 131.305(c) has been changed to "hearing" to make specific the intention not to require a record of a preliminary conference. In addition, proposed § 131.305(c) has been expanded to include assignment of the costs of transcripts of administrative proceedings, as requested by one commenter.

REGULATORY ANALYSIS

This rulemaking has been reviewed under the final Department of Transportation Regulatory Policies and Procedures for Improving Government Regulations, 44 FR 11034-45, effective March 1, 1979. When initially proposed, we treated this rulemaking as "significant" and prepared a draft Regulatory Analysis under Interim Departmental guidelines. After further review, and concurrence by the Secretary of Transportation, we have reclassified this rulemaking as "non-significant". However, a final Regulatory Analysis has nevertheless been prepared and may be obtained by interested persons by submitting a written request to the Fund address listed in

the final rule at § 135.9(a) or calling (202) 426-2606.

Numerous comments were received which took issue with the statement appearing at pps. 3-4 of the draft Regulatory Analysis that "... the Coast Guard has concluded that the proposed regulations are basically procedural in nature and ... are not likely to have a major general economic impact ...". The concern expressed in virtually all comments received was that it would be extremely difficult and costly, if not impossible, for much of the offshore industry to show the evidence of financial responsibility required by the proposed regulations. As a result, it was argued that the possible adverse consequences recognized by the Coast Guard would be realized. Those consequences included a reduction in competition, a reduction in production, and ultimately, an increase in the cost of OCS petroleum to the consumer.

Part of the concern expressed over this issue may have resulted from a failure to realize what is meant by a "major economic impact". According to the Department of Transportation guidelines, a regulation will have a major economic impact if it will result in an annual effect on the economy of \$100 million or more, will result in a major effect on the general economy in terms of costs, consumer prices, or production, or will result in a major increase in costs or prices for individual industries, levels of government, or geographic regions. Assuming that insurance will be available at a reasonable cost and that the cost estimates made by the Coast Guard are accurate, it may be concluded that the impact of the regulations does not begin to approach the magnitude described as "major" by the DOT guidelines.

Several specific reasons were advanced as to why it would not be possible to meet the financial responsibility requirements originally proposed. The surety method was described as "totally useless." The cost of a surety bond under the FWPCA was quoted as 2% per year. Though it may not be proper to expect exactly the same cost under Title III, that cost does provide some indication of the expected cost to obtain a surety bond under Title III. In a case where joint owners provide evidence in proportion to their interests, such a cost may not be considered burdensome. However, in a case where an individual owner desires to provide evidence by the surety method, such cost might be prohibitive. In addition to the yearly cost, a bonded company must pay back any amount paid out by the bonding company. It should be pointed out that the regulations do not mandate that this method be used; rather, it is one option which may be selected.

The guarantee method was considered somewhat limited because it was felt that large companies would provide a guarantee only to their subsidiaries. That may or may not be true. Large companies may guaranty firms other than their subsidiaries in order to obtain necessary services that may be more economically performed by outside firms than by their subsidiaries. The guaranty method may not turn out to be the most often selected method of establishing evidence, but it does offer a viable alternative.

It was also stated that if a guarantee was to be provided it would have to be treated as a contingent liability on the guarantor's balance sheet, thereby limiting the guarantor's ability to obtain funds through issuance of debt. According to the Financial Accounting Standards Board's "Statement of Financial Accounting Standards No. 5," a guarantee need not be disclosed as a contingent liability if it involves "... an unasserted claim or assessment when there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment unless it is considered probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable." Even in the case where a guaranty was to be considered a contingent liability, the amount to be recognized would only be that amount considered reasonably expected to be called upon in the event of a spill. An estimate of expected removal costs and damage claims payments suggests that the amount to be recognized would be quite small. Therefore, a guaranty would not necessarily limit a guarantor's ability to issue debt and may be considered a viable method of establishing evidence of financial responsibility.

Several owners and operators of MODU's expressed concern that indemnity was not available as a method of establishing evidence of financial responsibility. It may be stated that indemnity was available in the proposed regulations due to the provision that the Fund Administrator could accept alternative evidence at his discretion. However, since indemnity has historically been available to owners and operators, it has been specifically included in the final regulations as an acceptable method. Acceptance of an indemnity reduces the economic impact to owners and operators of MODU's because it enables presently established procedures to be followed. Since indemnitors can be expected to have established a relatively high amount of evidence for their own operations, in most cases the marginal increase caused by providing an indemnity to others will be relatively slight.

No comments were received concerning the cost of obtaining evidence by the guaranty or indemnity method. It may be assumed that there would be no net cost of a guaranty or indemnity provided by a parent to a wholly owned subsidiary. However, in a case where other than a wholly owned subsidiary has contracted with a guarantor or indemnitor to perform a service, there would probably be an appropriate modification in the fee charged for service. The guarantor or indemnitor might then be required to incur an additional expense in order to obtain the additional evidence necessary. Any expense incurred would depend upon the method chosen to establish evidence of financial responsibility. Ultimately, that expense may be expected to approximate the cost of insurance since guaranty and indemnity may be thought of as merely a form of insurance.

Comments received concerning the cost of insurance generally indicated that, due to the requirements imposed by the proposed regulations, insurance would probably not be available at any cost. It was felt, however, that if several changes were made to the proposed regulations a market would develop. Unfortunately, the comments received did not indicate what the cost of insurance would be if such changes were incorporated in the final regulations. Several suggested changes have been made to the proposed regulations and it is now felt that an insurance market will develop.

Ultimately, the cost of insurance will be determined by the magnitude of removal costs and damages paid by industry. The Coast Guard has estimated that on an average annual basis the amount paid will be approximately \$10 million. That amount does not seem large enough to cause one to conclude that the cost of insurance will be substantial. However, because the deviation in that figure in any one year is quite high, it is possible that a rather large premium could be charged to insure such an exposure.

The Coast Guard has made every effort to ensure that the final regulations are structured so that it will be possible to establish evidence of financial responsibility. It must be assumed that the suggestions provided by industry, and to a large extent adopted by the Coast Guard, were sufficient to meet that goal. Therefore, the Coast Guard remains of the opinion that the regulations are basically procedural in nature and are not likely to have a major economic impact as defined by DOT regulatory guidelines. The Coast Guard will closely monitor the impact of the regulations in this area, with particular attention being given to the insurance study to be conducted by the Department of Commerce. Should

the cost of establishing evidence of financial responsibility be found to be unreasonable the regulations concerning financial responsibility may be modified.

FURTHER EVALUATION OF FINAL RULES

Because these regulations constitute an entirely new program, the Coast Guard will closely monitor their implementation. Unless serious problems are encountered, the Coast Guard intends to wait until the program has been in full operation for approximately one year before proposing modifications. Comments on these rules may be submitted at any time, to the Fund address listed in § 135.9(a), however, actual experience under the program will provide the best basis for suggesting future adjustments to these rules.

EXCEPTION TO THIRTY DAY EFFECTIVE DATE RULE

Section 315(b) of the Act requires that the rules and regulations required to be promulgated under Title III shall be effective on the 180th day after enactment of this title. Enactment occurred on September 18, 1978; therefore, the effective date of these rules is March 17, 1979. We find the statutory mandate is good cause for making these regulations effective in less than the normal 30 days following publication of a final rule.

Although these final rules are effective March 17, 1979, section 313(c) of the Act requires enactment of an appropriations act before the Fund will have the authority to make contracts, to make disbursements, to issue notes or other obligations under section 302(f) of Title III, to charge and collect fees under section 302(d) of Title III, or to exercise any other spending authority. This legislation has not yet been enacted. Therefore, as a practical matter, the Offshore Oil Pollution Compensation Fund is not yet operative. The Coast Guard will issue a notice to announce when the Fund becomes operational.

Issuance: In consideration of the foregoing, Chapter I of Title 33 of the Code of Federal Regulations is amended by adding a new Subchapter M to read as follows:

SUBCHAPTER M—MARINE OIL POLLUTION LIABILITY AND COMPENSATION

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

Subpart A—General

- Sec.
135.1 Purpose.
135.3 Applicability.
135.5 Definitions.
135.7 Delegation—Fund Administrator.
135.9 Fund address.

Subpart B—Levy of Fees

- 135.101 Purpose.
135.103 Levy and payment of barrel fee on OCS oil.
135.105 Adjustment of levy.

Subpart C—Financial Responsibility for Offshore Facilities

- 135.201 Applicability.
135.203 Amount required.
135.204 Submission of evidence.
135.205 Methods of establishing.
135.207 Insurance as evidence.
135.209 Guaranty as evidence.
135.210 Indemnity as evidence.
135.211 Surety bond as evidence.
135.213 Qualification as self-insurer.
135.215 Certification.
135.219 Notification of changes affecting certification.
135.221 Reapplication for certification.
135.223 Certificates, denial or revocation.

Subpart D—Notification, Designation, and Advertisement

- 135.301 Purpose.
135.303 Definitions.

NOTIFICATION

- 135.305 Notification procedures.
135.307 Notification contents.

DESIGNATION

- 135.309 Notice of designation.
135.311 Denial of designation.

ADVERTISEMENT

- 135.313 Advertisement determinations.
135.315 Types of advertisement.
135.317 Frequency and geographical scope of advertisement.
135.319 Content of advertisement.

Subpart E—Access, Denial, and Detention

- 135.401 Access to vessel Certificates of Financial Responsibility.
135.403 Sanctions for failure to produce vessel Certificates of Financial Responsibility.
135.405 Appeal provisions.

AUTHORITY: Title III, Pub. L. 95-372, 92 Stat. 670 (43 U.S.C. 1811 et. seq.); EO 12123, 44 FR 11199; 49 CFR 1.46.

Subpart A—General

§ 135.1 Purpose.

(a) This part prescribes the policies, procedures, and administrative practices regarding offshore oil pollution liability and compensation, including the administration and general operation of the fund established under Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 43 U.S.C. 1811 et. seq.).

§ 135.3 Applicability.

(a) This part applies to each person who—

(1) Owns oil obtained from the Outer Continental Shelf when the oil is produced;

(2) Owns, operates, or is the guarantor of the owner or operator of any vessel;

(3) Owns, operates, or is the guarantor of the owner or operator of any offshore facility;

(4) Sustains an economic loss as a consequence of oil pollution arising from Outer Continental Shelf activities; or

(5) Otherwise has responsibilities under Title III of the Act and the regulations in this part.

§ 135.5 Definitions.

(a) As used in this part, the following terms shall have the same meaning as defined in section 301 of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372): "barrel"; "claim"; "discharge"; "facility"; "Fund"; "guarantor"; "incident"; "offshore facility"; "oil pollution"; "operator"; "owner"; "person"; "person in charge"; "public vessel"; and "vessel".

(b) As used in this part—

(1) "Act" means Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), entitled "Offshore Oil Spill Pollution Fund".

(2) "Captain of the Port" means a Coast Guard officer designated as Captain of the Port for the areas described in Part 3 of this chapter, or that person's authorized representative or, where there is no Captain of the Port area, the District Commander.

(3) "Commandant" means the Commandant of the Coast Guard or that person's authorized representative.

(4) "District Commander" means the Coast Guard officer commanding a Coast Guard District described in Part 3 of this chapter, or that person's authorized representative.

(5) "Fund Administrator" means the person to whom the authority and functions of the Commandant as administrator of the Fund are delegated.

(6) "Oil" means petroleum, including crude oil or any fraction or residue therefrom and natural gas condensate, except that the term does not include natural gas.

(7) "Outer Continental Shelf" or "OCS" means "Outer Continental Shelf" as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

§ 135.7 Delegation—Fund Administrator.

(a) The Fund Administrator is delegated authority to perform those functions assigned or delegated to the Secretary of Transportation under the Act not reserved by the Secretary of Transportation or the Commandant.

(b) The Fund Administrator may redelegate and authorize successive redelegations of the authority granted in

paragraph (a) of this section within the command under which that person has jurisdiction or to members of the Fund staff.

§ 135.9 Fund address.

(a) The address to which correspondence relating to the Coast Guard's administration of the Fund is to be directed and the location of the Fund Administrator is Offshore Oil Pollution Compensation Fund, U.S. Coast Guard Headquarters (G-W/73), 400 Seventh Street, S.W., Washington, D.C. 20590.

Subpart B—Levy of Fees

§ 135.101 Purpose.

(a) The purpose of this subpart is to state the general requirements concerning the levy of fees.

§ 135.103 Levy and payment of barrel fee on OCS oil.

(a) A fee of \$.03 per barrel is levied on all oil produced on the OCS and shall be imposed on the owner of the oil when such oil is produced.

(b) The owner of oil obtained from the OCS shall, for the purpose of computing the barrel fee levied in paragraph (a) of this section, measure OCS oil production by employing the methods and criteria of the U.S. Geological Survey contained in 30 CFR 250.60 and OCS Order 13.

NOTE.—Payment of the fee levied in paragraph (a) of this section is made in accordance with the fee collection regulations issued by the Secretary of the Treasury. The Federal Government entitlement to royalty oil does not constitute ownership of oil at the time of production.

§ 135.105 Adjustment of levy.

(a) The Commandant modifies or suspends by regulation the barrel fee levied in § 135.103(a) to maintain the statutory Fund level.

(b) The Commandant gives at least 90 days notice before any barrel fee modification or suspension becomes effective.

Subpart C—Financial Responsibility for Offshore Facilities

§ 135.201 Applicability.

(a) This subpart applies to the owner or operator of each offshore facility required by the Act to establish and maintain evidence of financial responsibility.

(b) For the purpose of this subpart:

(1) All structures, including platforms, wells, and pipelines, are considered a single offshore facility if they are physically connected, located upstream of the point of custody transfer, within the same oil field, and under one ownership.

(2) If separate parts of a structure, including platforms and pipelines, are

owned separately, each part having common ownership is considered a separate offshore facility.

(3) A mobile offshore drilling unit is considered an offshore facility from the moment a drill shaft or other device connected to the unit first touches the seabed or connects to a well for the purposes of exploration, development, or production of oil until drilling is completed and the unit is no longer attached to the well or drill hole by any device.

(4) A mobile offshore drilling unit considered an offshore facility under paragraph (b)(3) of this section remains a separate facility when physically connected to another offshore facility, unless both are under one ownership.

(5) All segments of a common carrier pipeline from the point of custody transfer to the shore, including any pumping or booster stations, which are under one ownership are considered a single offshore facility.

(6) Any pipeline, which is under one ownership, between two offshore facilities, or between an offshore facility and the shore, is considered a single offshore facility.

(7) Offshore facilities which drill for, produce, or process only natural gas are not subject to this subpart unless the facilities have the capacity to transport, store, or otherwise handle more than 1,000 barrels of condensate at any one time.

NOTE.—Regulations governing financial responsibility and certification for vessels are promulgated by the Federal Maritime Commission.

§ 135.203 Amount required.

(a) Each facility that is used for drilling for, producing, or processing oil, or which has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time must be covered by evidence of financial responsibility submitted by or on behalf of the owner or operator of the facility, in the amount of \$35,000,000.

(b) Evidence of financial responsibility established and maintained by a person who owns or operates more than one facility, or who has an interest in the ownership or operation of more than one facility, may be applied by that person towards establishing and maintaining the required evidence of financial responsibility for each facility in which that person has an interest, if the evidence is available to satisfy liabilities arising out of incidents involving those facilities.

§ 135.204 Submission of evidence.

(a) Where the offshore facility is owned and operated solely by one person, that person must establish and

maintain evidence of financial responsibility covering the facility.

(b) Where the offshore facility is owned in its entirety by one person and operated solely by another person, evidence of financial responsibility covering the facility must be established and maintained by either the owner or the operator, or, in consolidated form, by both the owner and operator.

(c) Where the offshore facility is owned or operated by more than one person, evidence of financial responsibility covering the facility must be established and maintained by any one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators.

(d) When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant must be shown. The evidence must be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(e) Each owner and operator of a facility is subject to the penalty provided by section 312(a) of the Act if evidence of financial responsibility is not established and maintained for that facility.

§ 135.205 Methods of establishing.

(a) Evidence of financial responsibility may be established by any one, or any combination acceptable to the Fund Administrator, of the following methods:

- (1) Insurance;
- (2) Guaranty;
- (3) Indemnity;
- (4) Surety bond; or
- (5) Qualification as self-insurer.

(b) The Fund Administrator will accept alternative evidence of financial responsibility if, in the Fund Administrator's opinion, it establishes an equivalent degree of financial responsibility for the purposes of this subpart.

§ 135.207 Insurance as evidence.

(a) Insurance filed with the Fund Administrator as evidence of financial responsibility shall be issued by an insurer that is acceptable to the Fund Administrator. Those insurers may include domestic and foreign insurance companies, corporations or associations of individual insurers, protection and indemnity associations, or other persons acceptable to the Fund Administrator.

(b) An insurer must—

(1) Agree to be sued directly, within the limits of the policy coverage, by any person for claims under the Act against the owner or operator; and

(2) Designate an agent in the United States for service of process.

(c) Insurance as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person insured, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the insurance applies ceases to be a facility under § 135.201(b).

(d) Termination of insurance coverage shall not affect the liability of the insurer for an incident occurring before the effective date of termination.

(e) Confirmation of insurance may be accepted from an insurance broker that is acceptable to the Fund Administrator, subject to the Fund Administrator's approval of the individual underwriters, in lieu of their signature on an application, provided the confirmation:

(1) States the insurance covers liabilities under the Act;

(2) Sets forth the limit and deductible;

(3) Provided for direct action against the individual underwriters to the extent of their contracts;

(4) Names the underwriters and percentages of the limit accepted by each;

(5) States that the underwriters agree to give prior written notice of cancellation or change to the Fund Administrator as required in paragraph (c) of this section; and

(6) States that the notice indicated in paragraph (e)(5) of this section will not affect the underwriter's liability for incidents occurring before the effective date of cancellation.

§ 135.209 Guaranty as evidence.

(a) Guarantors must—

(1) Agree to be sued directly, within the limits the guaranty, by any person for claims under the Act against the owner or operator; and

(2) Designate an agent in the United States for service of process.

(b) Guaranties filed as evidence of financial responsibility must be accompanied by the same proof that the Guarantor is financially responsible as this subpart would require of the owner or operator; i.e. insurance, surety bond, self-insurance, or other acceptable methods.

(c) A guaranty as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in

force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person guarantied, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the guaranty applies ceases to be a facility under § 135.201(b).

(d) Termination of the guaranty shall not affect the liability of the guarantor for an incident occurring before the effective date of termination.

§ 135.210 Indemnity as evidence.

(a) An indemnitor must—

(1) Agree to be sued directly, within the limits of the contract coverage, by any person for claims under the Act against the owner or operator to the extent of the indemnity coverage; and

(2) Designate an agent in the United States for service of process.

(b) Indemnity filed as evidence of financial responsibility must be accompanied by the same proof of the indemnitor's financial responsibility as this subpart would require of the owner or operator; i.e. insurance, surety bond, self-insurance; or other acceptable methods.

(c) An indemnity as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person indemnified, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the indemnity applies ceases to be a facility under § 135.201(b).

(d) Termination of an indemnity shall not affect the liability of the indemnitor for an incident occurring before the effective date of termination.

§ 135.211 Surety bond as evidence.

(a) Each surety bond filed with the Fund Administrator as evidence of financial responsibility shall be issued by a bonding company that—

(1) Is authorized to do business in the United States;

(2) Is licensed to do business in the state or territory in which the bond is executed;

(3) Is certified by the Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bond; and

(4) Designates an agent in the United States for service of process.

(b) The bonding company must agree to be sued directly, within the limits of the surety bond, by any person for claims under the Act against the owner or operator.

(c) A surety bond as evidence of financial responsibility must indicate the effective date in the endorsement on the application for Certificate of Financial Responsibility, and must remain in force until the date of termination indicated in the endorsement or until—

(1) 30 days after mailing, by certified mail, to the Fund Administrator, and the person bonded, notification of intent to cancel; or

(2) Other evidence of financial responsibility acceptable to the Fund Administrator has been established; or

(3) The facility to which the surety bond applies ceases to be a facility under § 135.201(b).

(d) Termination of the surety bond shall not affect the liability of the surety for an incident occurring before the effective date of termination.

§ 135.213 Qualification as self-insurer.

(a) Qualification for self insurance must be supported by a copy of the self-insurer's current balance sheet, income statement, and statement of changes in financial position that are certified by an independent Certified Public Accountant and must be accompanied by either—

(1) An additional statement confirming that the self-insurer's current U.S. assets, including those of consolidated subsidiaries held in the U.S., not including pledged assets or stock not publicly traded, exceed the current U.S. liabilities, and the self-insurer's net worth exceeds the amount of the requested self-insurance; or

(2) A statement, based on an analysis of the self-insurer's financial position, which shows that sufficient assets or cash flow, other than which might be damaged as a result of a pollution incident, are available which may be liquidated to provide the funds necessary to retire a claim for the amount of the self-insurance without placing the self-insurer in an insolvent position.

(b) The statements required by paragraphs (a) (1) and (2) of this section must be prepared and submitted by the involved Certified Public Accountant when the required financial statements are prepared in consolidated form and the liability represents less than the full financial backing of the consolidated entity, otherwise they may be prepared and submitted by the Treasurer or equivalent official.

(c) If the self-insurer files a Securities and Exchange Commission Form 10-K report, a copy of the self-insur-

er's most recent 10-K report must be filed with the Fund Administrator within 120 days after the end of the fiscal year to which it relates, in addition to filing the most recent 10-K report with the initial application.

(d) Each self-insurer must file annually with the Fund Administrator, copies of documents required under paragraph (a) of this section, within 120 days after the close of the self-insurer's fiscal accounting period. If a self-insurer files a 10-K report with the Fund Administrator under paragraph (c) of this section which contains some of the financial statements required in paragraph (a), a separate filing of those specific statements need not be made.

§ 135.215 Certification.

(a) Applicants shall—

(1) If the facility is in existence before September 17, 1979, apply for a Certificate of Financial Responsibility before September 17, 1979.

(2) If the offshore facility is not in existence on September 17, 1979, apply for a Certificate of Financial Responsibility at least 45 days before placing the offshore facility into operation or coverage becomes effective.

(3) If submitting an application to include an additional facility under previously established evidence of financial responsibility, apply for a Certificate of Financial Responsibility as early as possible before the anticipated date of desired coverage.

(b) Each application for a Certificate of Financial Responsibility must be made on a Coast Guard prescribed Application for Certificate of Financial Responsibility form, available from the Fund Administrator or any Coast Guard District Office. This form must be submitted for each facility; however, if evidence of financial responsibility has been previously established in an amount sufficient to meet § 135.203 (a), no additional evidence need be submitted with the application.

(c) Each application form submitted under this section must be signed by the applicant. A written statement proving authority to sign must also be submitted where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or other officer of a corporate applicant.

(d) Financial data or other information submitted under this section that is proprietary in nature, or constitutes a trade secret, must be clearly designated as such to insure confidential treatment by the Fund Administrator, under 5 U.S.C. 552, the Freedom of Information Act, which provides for exemption from disclosure of trade secret data.

(e) If any of the information submitted for certification is determined by

the Fund Administrator to be insufficient the Fund Administrator may require additional information before final consideration of the application.

(f) Certificates, as issued, are to be considered property of the U.S. Government, are not to be altered in any manner, and must be surrendered on demand when revoked in accordance with § 135.223 of this subpart.

(g) Applicants shall obtain a Certificate of Financial Responsibility for each facility.

§ 135.219 Notification of changes affecting certification.

(a) Each owner, operator, or guarantor of an offshore facility shall within ten days notify the Fund Administrator in writing when any changes occur which prevent the owner, operator, or guarantor, from meeting the obligations for which a Certificate of Financial Responsibility has been issued.

(b) Based on notice of a change in financial capability under paragraph (a) of this section, the Fund Administrator may revoke a Certificate of Financial Responsibility.

§ 135.221 Reapplication for certification.

(a) If a Certificate of Financial Responsibility becomes invalid for any reason, an application for a new certificate must be immediately submitted to the Fund Administrator in accordance with § 135.204.

§ 135.223 Certificates, denial or revocation.

(a) A certificate may be denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Fund Administrator in connection with establishing or maintaining evidence of financial responsibility.

(2) Failure of an applicant or certificate to establish or maintain evidence of financial responsibility as required by the regulations in this subpart.

(3) Failure to comply with or respond to inquiries, regulations, or orders of the Fund Administrator concerning establishing or maintaining evidence of financial responsibility.

(4) Failure to timely file the reports or documents required by § 135.213 (c) and (d).

(5) Cancellation or termination of any insurance policy, surety bond, indemnity, or guaranty issued under this subpart or modification thereto which reduces the financial capacity of the applicant or certificate to meet the requirements of this subpart, unless substitute evidence of financial responsibility has been submitted to and accepted by the Fund Administrator.

(b) Denial or revocation of a certificate shall be immediate and without prior notice in a case where the applicant or certificate—

(1) Is no longer the owner or operator of the offshore facility in question;

(2) Fails to furnish acceptable evidence of financial responsibility in support of an application, or

(3) Permits the cancellation or termination of the insurance policy, surety bond, indemnity, or guaranty upon which the continued validity of the certificate is based.

(c) In any other case, before the denial or revocation of a certificate, the Fund Administrator advises the applicant or certificate, in writing, of the intention to deny or revoke the certificate, and shall state the reason therefor.

(d) If the reason for an intended revocation is failure to file the reports or documents required by § 135.213 (c) and (d) the revocation shall be effective 10 days after the date of receipt of the notice of intention to revoke, unless the certificate shall, before revocation, submit the required material or demonstrate that the required material was timely filed.

(e) If the intended denial or revocation is based upon one of the reasons in paragraphs (a)(1) or (a)(3) of this section, the applicant or certificate may request, in writing, a hearing to show that the applicant or certificate is in compliance with this subpart. If the applicant or certificate fails to file a timely request for a hearing, the denial or revocation is effective 10 days after receipt of the notice.

(f) If a request for a hearing under paragraph (e) of this section is received by the Fund Administrator within 10 days after the date of receipt of a notice of intention to deny or revoke, the Fund Administrator grants a hearing and notifies the requesting party of the date, time, and location of the hearing. If a requesting party fails to enter an appearance at the scheduled hearing, or in lieu thereof fails to submit written evidence for the consideration of the hearing official, denial or revocation is effective as of the scheduled date and time of the hearing, unless an extension of time is granted by the Fund Administrator for good cause shown.

(g) Hearings under this section are informal and are conducted by an official designated by the Fund Administrator. The official conducting the hearing considers all relevant material submitted and makes recommendations to the Fund Administrator.

(h) The Fund Administrator's decision is final agency action.

Subpart D—Notification Designation and Advertisement

§ 135.301 Purpose.

(a) This subpart prescribes the requirements concerning notification of pollution incidents, source designa-

tion, and advertisement of designations.

§ 135.303 Definitions.

(a) As used in this subpart—

(1) "Advertisement" means the dissemination of information, including methods other than paid advertisements, that advises the public how to contact the designated source of pollution or the Fund to initiate a claim for economic loss.

(2) "Designated source" means a vessel or offshore facility which has been designated by the Commandant as a source of oil pollution.

(3) "Occurrences which pose an imminent threat of oil pollution" means those incidents that are likely to result in a discharge of oil and include, but are not limited to: vessel collisions, grounding or stranding; structural failure in a tank, pipeline or other oil handling system; fire, explosion or other events which may cause structural damage to a vessel or offshore facility.

NOTIFICATION

§ 135.305 Notification procedures.

(a) The person in charge of a vessel or offshore facility that is involved in an incident, including occurrences which pose an imminent threat of oil pollution shall, as soon as that person has knowledge of the incident, immediately notify by telephone, radio telecommunication or a similar rapid means of communication, in the following order of preference—

(1) (Within or offshore of the 48 contiguous States only) The Duty Officer, National Response Center, U.S. Coast Guard, 400 Seventh Street SW., Washington, D.C. 20590, toll free telephone number 800-424-8802; or

(2) The commanding officer or supervisor of any Coast Guard Marine Safety Office, Captain of the Port Office, Marine Safety Detachment or Port Safety Detachment in the vicinity of the incident; or

(3) The commanding officer or officer in charge of any other Coast Guard unit in the vicinity of the incident; or

(4) The Commander of any Coast Guard District.

(b) Notification given in accordance with this subpart constitutes fulfillment of the requirements of Subpart C of 33 CFR Part 153 concerning Notice of the Discharge of Oil.

§ 135.307 Notification contents.

(a) In each notification provided under § 135.305, the person in charge of the vessel or offshore facility involved in the incident shall provide his or her name and telephone number, or radio call sign, and, to the extent known, the—

- (1) Location, date and time of the incident;
- (2) Quantity of oil involved;
- (3) Cause of the incident;
- (4) Name or other identification of the vessel or offshore facility involved;
- (5) Size and color of any slick or sheen and the direction of movement;
- (6) Observed on scene weather conditions, including wind speed and direction, height and direction of seas, and any tidal or current influence present;
- (7) Actions taken or contemplated to secure the source or contain and remove or otherwise control the discharged oil;
- (8) Extent of any injuries or other damages incurred as a result of the incident;
- (9) Observed damage to living natural resources; and
- (10) Any other information deemed relevant by the reporting party or requested by the person receiving the notification.

(b) The person giving notification of an incident must not delay notification to gather all required information and must provide any information not immediately available when it becomes known.

DESIGNATION

§ 135.309 Notice of Designation.

(a) Upon learning of an incident which involves oil pollution, the Commandant designates, where possible, the source of the oil pollution and so notifies the owner, operator and any guarantor.

(b) Designation is made by a written Notice of Designation containing, to the extent known:

- (1) The name of the vessel or offshore facility being designated as the source of oil pollution;
- (2) The location, date, and time of the incident;
- (3) The quantity of oil involved;
- (4) The procedures for accepting or denying the designation;
- (5) The initial requirements of advertising, if any, and
- (6) The name, address and telephone number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident, or denial of designation should be directed.

§ 135.311 Denial of designation.

(a) The owner, operator or guarantor of a designated source may deny a designation within five days after receipt of a written Notice of Designation.

(b) A denial of designation must be in writing and—

- (1) Identify the Notice of Designation; and
- (2) Be submitted to the official named in the Notice of Designation.

(c) Failure to deny a designation does not, in and of itself, constitute acceptance of liability under the Act for losses resulting from the incident described in the Notice of Designation.

ADVERTISEMENT

§ 135.313 Advertisement determinations.

(a) The Commandant shall determine whether each incident has caused, or is likely to cause, economic loss covered by section 303 (a) of the Act. Where such loss has occurred or is likely to occur, the type, scope, and frequency of advertisement required shall be determined as provided in paragraph (b) of this section.

(b) In making the determination specified in paragraph (a) of this section, the Commandant considers—

(1) The nature and extent of economic losses that have occurred or are likely to occur;

(2) The persons who are likely to incur economic losses;

(3) The geographical area that is or is likely to be affected;

(4) The most effective method of reasonably notifying potential claimants of the designation and procedures for submitting claims; and

(5) Any relevant information or recommendations submitted by the owner, operator or guarantor of the designated source.

(c) The Commandant provides, in writing, the specific requirements for advertising for each pollution incident to the designated representatives of the owner, operator, or guarantor.

§ 135.315 Types of advertisement.

(a) Advertisement required by this subpart shall be made by one or more of the following means:

(1) Paid advertisement in a newspaper, or newspapers, having general circulation in the area designated by the Commandant;

(2) A public service announcement on commercial radio and television stations serving the area designated by the Commandant, when such services are available;

(3) Notice posted in marinas, marine supply stores, bait and tackle shops and other appropriate business establishments or public facilities in the area designated by the Commandant;

(4) News release to all newspapers, radio and television stations serving the area designated by the Commandant; and

(5) Publication in the Notice to Mariners.

§ 135.317 Frequency and geographical scope of advertisement.

(a) The frequency and geographical coverage of advertisement depends upon the circumstances of each inci-

dent and will be specified by the Commandant.

(b) When required, the substance of the required advertisement will be published in at least four successive editions of the Local Notice to Mariners.

§ 135.319 Content of advertisement.

(a) Each advertisement required by this subpart must specify the—

(1) Location, date, and time of the incident;

(2) Geographical area affected, as determined by the Commandant;

(3) Quantity of oil involved;

(4) Name or other description of the source designated by the Commandant;

(5) Identity of the owner, operator or guarantor of the source;

(6) Name, address, telephone number, office hours and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

Subpart E—Access, Denial, and Detention

§ 135.401 Access to vessel Certificates of Financial Responsibility.

(a) The owner, operator, master or agent of any vessel subject to the Act shall, upon request by any Coast Guard officer or petty officer, permit access to the vessel and produce for examination the Certificate of Financial Responsibility.

§ 135.403 Sanctions for failure to produce vessel Certificates of Financial Responsibility.

(a) The Captain of the Port issues denial or detention orders to the owner, operator, agent, or master of any vessel that cannot show upon request a valid Certificate of Financial Responsibility issued under the Act.

(b) A denial order forbids entry of any vessel subject to the Act to any port or place in the United States or to the navigable waters of the United States.

(c) A detention order detains any vessel subject to the Act at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(d) The Captain of the Port terminates a denial or detention order when the owner, operator, agent, or master of a vessel furnishes adequate evidence that the certification of financial responsibility requirements under the Act have been met.

§ 135.405 Appeal provisions.

(a) The owner, operator, agent or master of a vessel issued a denial or detention order under this subpart

may petition the District Commander in any manner to review that order.

(b) Upon completion of review, the District Commander affirms, sets aside, or modifies the order.

(c) Unless otherwise determined by the District Commander a denial or detention order remains in effect pending the outcome of any petition or appeal of that order.

(d) The District Commander acts on all petitions or appeals within 10 days of receipt.

(e) The decision of the District Commander is final agency action.

PART 136—OFFSHORE OIL POLLUTION COMPENSATION FUND, CLAIMS PROCEDURES

Subpart A—Introduction

Sec.

136.1 Purpose.

136.3 Information.

136.5 Definitions.

136.7 Foreign Claims.

Subpart B—General

TIMELINESS

136.101 Time limitation on claims.

PRESENTMENT

136.103 Federally authorized removal costs.

136.105 Other claims.

136.107 Presenting claims to the Fund.

136.109 Referral of unsettled claims.

136.111 Form.

136.113 Subrogation.

CONTENT

136.115 Proof.

136.117 Evidence.

136.119 Multiple items of damage.

136.121 Insurance.

136.123 Other compensation.

136.125 Costs incident to claim preparation.

SETTLEMENT AND NOTICE TO CLAIMANT

136.127 Payment.

136.129 Denial of claim.

Subpart C—Procedures for Particular Losses

INJURY TO, DESTRUCTION OF OR LOSS OF USE OF PROPERTY

136.201 Authorized claimants.

136.203 Proof.

136.205 Compensation allowed.

LOSS OF INCOME DUE TO INJURY TO, OR DESTRUCTION OF, PROPERTY OR NATURAL RESOURCES

136.207 Authorized claimants.

136.209 Proof.

136.211 Compensation Allowed.

INJURY TO, OR DESTRUCTION OF, NATURAL RESOURCES

136.213 Authorized claimants.

136.215 Proof.

136.217 Compensation allowed.

LOSS OF USE OF NATURAL RESOURCES

136.219 Authorized claimants.

136.221 Proof.

136.223 Compensation allowed.

CLEANUP COSTS

136.225 Authorized claimants.

136.227 Proof.

136.229 Compensation allowed.

LOSS OF TAX REVENUE DUE TO INJURY TO PROPERTY

136.231 Authorized claimants.

136.233 Proof.

136.235 Compensation allowed.

Subpart D—Administrative Review of Claims

136.301 General.

136.303 Initiation of administrative review.

136.305 Procedure.

136.307 Subpenas.

136.309 Review of Administrative determination.

AUTHORITY: Title III, Pub. L. 95-372, 92 Stat. 670 (43 U.S.C. 1811 et seq.); 49 CFR 1.46.

Subpart A—Introduction

§ 136.1 Purpose.

(a) This part prescribes uniform procedures and standards for the settlement of claims against the Offshore Oil Pollution Compensation Fund (the Fund) for economic loss, including removal costs, resulting from or arising out of oil pollution from certain Outer Continental Shelf activities as authorized by and in accordance with Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372; 43 U.S.C. 1811-1824).

§ 136.3 Information.

(a) Any person who desires to file a claim against the Fund may obtain information from the Administrator, Offshore Oil Pollution Compensation Fund, U.S. Coast Guard Headquarters (G-W/73), 400 Seventh Street SW., Washington, D.C. 20590.

§ 136.5 Definitions.

(a) As used in this part, the following terms shall have the same meaning as defined in section 301 of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372): "claims"; "cleanup costs"; "damages"; "foreign claimant"; "Fund"; "guarantor"; "incident"; "offshore facility"; "oil pollution"; "operator"; "owner"; "person"; "property"; "removal costs"; "State"; "United States"; "United States claimant"; and "vessel".

(b) As used in this part—

(1) "Act" means Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 43 U.S.C. 1811-1824), entitled "Offshore Oil Spill Pollution Fund".

(2) "Administrative Law Judge" means any person designated by the Commandant under 5 U.S.C. 3105 and assigned to hear and resolve disputed claims in accordance with section 307 [i] of the Act.

(3) "Commandant" means the Commandant of the Coast Guard or that person's authorized representative.

(4) "Fund Administrator" means the person to whom the authority and functions of the Commandant as administrator of the Fund are delegated.

(5) "Fund Claims Adjuster" means a person authorized to receive, review, adjust, and pay claims on behalf of the Fund.

(6) "Natural resources" means land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any state or local government, or any foreign government.

(7) "Oil" means petroleum, including crude oil or any fraction or residue therefrom and natural gas condensate, except that the term does not include natural gas.

(8) "Outer Continental Shelf" means "outer Continental Shelf" as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(9) "Panel" means a three member panel appointed by the Secretary of Transportation in accordance with section 307(h) of the Act.

§ 136.7 Foreign claims.

(a) Claims may be presented by foreign claimants for economic loss, except for loss of tax revenues, to the same extent that compensation for economic loss may be claimed by any United States claimant when the conditions of section 303(b)(6) of the Act are met.

(b) Foreign claims must be submitted in accordance with the regulations of this part and any additional instructions of the Fund Administrator.

(c) Before any foreign claim may be paid, the Fund Administrator certifies that the foreign claim is appropriate for consideration by the Fund.

Subpart B—General

TIMELINESS

§ 136.101 Time limitation on claims.

(a) A claim will not be considered by the Fund unless presented, in writing, to the Fund within three years of discovery of the economic loss for which compensation is sought or within six years of the date of the incident which resulted in the loss, whichever is earlier.

(b) When necessary to meet this section, a claim may be presented to the Fund even though the claim has been presented to and is under consideration by the owner, operator, or guar-

antor of a designated source, or other person.

(c) A claim is presented on the date the claim is actually received by a Fund Claims Adjuster or Fund Administrator.

PRESENTMENT

§ 136.103 Federally authorized removal costs.

(a) Claims for federally authorized removal costs incurred under subsection (c), (d), or (1) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act must be presented to the fund established by section 311(k) of the Federal Water Pollution Control Act (33 U.S.C. 1251-1376) in accordance with the regulations of Subpart D of 33 CFR, Part 153.

§ 136.105 Other claims.

(a) If the source of pollution is known, claims must be presented to the owner, operator, or guarantor of the source, except where the Fund Administrator has advertised or otherwise notified claimants and potential claimants that the claims may be presented to the Fund.

(b) A claim presented to the owner, operator, or guarantor of the source of pollution which is denied for any reason or not settled by payment within sixty days may be presented to the Fund.

(c) A claim may be presented to the Fund when the source of pollution is not known.

§ 136.107 Presenting claims to the Fund.

(a) A claimant must present a claim to the Fund by making the claim personally at, or by delivering or mailing the claim directly to the Fund Claims Adjuster, if known. If the Fund Claims Adjuster is not known, the claim may be submitted to the Fund Administrator who will forward it to the appropriate adjuster.

§ 136.109 Referral of unsettled claims.

(a) A claimant may present any claim not satisfied under § 136.105(b) by requesting the owner, operator, or guarantor to whom the claim has been presented to refer the claim to the Fund.

(b) The owner, operator, or guarantor shall, within seven days of receiving a request under paragraph (a) of this section, forward the entire claim file directly to the Fund Claims Adjuster specified by the Fund Administrator.

§ 136.111 Form.

(a) A claim must be in writing and include the amount claimed.

(b) Whenever practicable, a claimant should submit a claim in the format

specified and on the forms provided by the Fund Claims Adjuster.

(c) Each claim must be signed in ink by the claimant or an authorized agent or legal representative of the claimant.

(d) A claim presented by an agent or legal representative must be presented in the name of the claimant, showing the title or legal capacity of the agent or representative.

§ 136.113 Subrogation.

(a) The claims of subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute a single claim.

(b) A subrogor and subrogee may file a claim jointly or individually. If a joint claim is made, it must be signed by all parties in interest.

(c) A fully subrogated claim is payable only to the subrogee.

(d) A subrogee must support a claim in the same manner as any other claimant.

CONTENTS

§ 136.115 Proof.

(a) A claimant seeking damages must establish—

(1) The nature and extent of economic loss incurred;

(2) When and how the economic loss was incurred;

(3) That the cause of the economic loss was oil pollution;

(4) That the source of the oil pollution was an offshore facility or vessel; and

(5) The actions taken to avoid or minimize the effects of the oil pollution.

(b) A claimant seeking cleanup costs must establish that the cleanup costs incurred were the consequence of or in response to an incident.

§ 136.117 Evidence.

(a) A claimant must submit evidence in support of each claim.

(b) A sworn statement of the claimant may be accepted when other evidence is not available.

§ 136.119 Multiple items of damage.

(a) A claimant must include all known losses arising out of a single incident or from the same oil pollution when submitting a claim.

(b) Each separate type of loss (as described in Subpart C of this part) must be separately listed.

(c) In the discretion of the Fund Administrator each separate type of loss may be treated separately for settlement purposes.

§ 136.121 Insurance.

(a) A claimant must provide the following information concerning any insurance owned by the claimant which

may cover the loss for which compensation is claimed.

(1) The names and addresses of insurers;

(2) The kind and amount of coverage;

(3) The policy number;

(4) Whether a claim has been or will be presented to an insurer, and if so, the amount of the claim and the name of the insurer; and

(5) Whether any insurer has paid the claim in full or in part, or has indicated whether or not payment will be made.

§ 136.123 Other compensation.

(a) A claimant must include with each claim an accounting, including source and value, of all other compensation received as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

§ 136.125 Costs incident to claim preparation.

(a) Costs necessarily incurred in the preparation of a claim may be included in the claim.

(b) Compensation may be allowed for reasonable, necessary, costs of claim preparation.

SETTLEMENT AND NOTICE TO CLAIMANT

§ 136.127 Payment.

(a) Payment is made as soon as possible when a claim is approved in full or an offer of settlement is accepted.

(b) Whenever a claim is not approved in full, the claimant is notified in writing of the settlement offer. Acceptance of the settlement offer must be in writing.

(c) The acceptance of an offer in settlement is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim.

(d) Failure to accept an offer of settlement within thirty days constitutes rejection of the offer.

§ 136.129 Denial of claim.

(a) A claimant will be notified in writing whenever a claim against the Fund is denied, including when denial results from rejection, by the claimant, of an offer of settlement.

(b) The notification of paragraph (a) of this section includes a statement of the claimants right to further review of the claim.

(c) A claimant may consider a claim not settled within sixty days of receipt by a Fund Claims Adjuster as being denied for purposes of administrative review.

Subpart C—Procedures for Particular Losses

INJURY TO, DESTRUCTION OF OR LOSS OF USE OF PROPERTY

§ 136.201 Authorized claimants.

(a) A claim for injury to or destruction of real or personal property, which may include loss of use of the property, or a claim for loss of use of real or personal property which is not damaged, may be presented by any person either owning or leasing the property.

§ 136.203 Proof.

(a) A claimant must establish an ownership, rental, or leasehold interest in the property.

(b) For each claim for injury to, or destruction of, property the claimant must establish—

(1) That the property was injured or destroyed;

(2) The cost of repair or replacement; and

(3) The value of the property both before and after injury occurred, if the cost of repairs exceeds replacement cost.

(c) For each claim for loss of use of property, the claimant must establish—

(1) That the property was not available for use;

(2) Whether or not substitute property was available and utilized, and the costs thereof; and

(3) The economic loss incurred as a result of the loss of use of the property.

§ 136.205 Compensation allowed.

(a) The measure of damages for injured property is the actual or estimated net cost of repairs necessary to restore the property to substantially the condition which existed immediately before injury.

(b) If the actual or estimated net cost of repairs exceeds the value of the property immediately before injury less the value immediately after injury, the measure of damages is the value of the property immediately before injury less the value immediately after injury.

(c) Compensation for loss of use of property may be allowed for reasonable costs, actually incurred, for use of substitute property or, if substitute property was not reasonably available, for the amount of the net economic loss which resulted from not having use of the property. When substitute property was reasonably available, but not used, compensation for loss of use is not payable.

LOSS OF INCOME DUE TO INJURY TO, OR DESTRUCTION OF, PROPERTY OR NATURAL RESOURCES

§ 136.207 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources may be presented by any person deriving at least 25 per cent of his or her annual income from activities which utilize, or are related to the utilization of, the property or natural resource.

(b) A person who either owns or leases property which is injured or destroyed is not a proper claimant under paragraph (a) of this section. That person should claim under § 136.201.

(c) A person who uses natural resources directly is not a proper claimant under paragraph (a) of this section. That person should claim under § 136.219.

§ 136.209 Proof.

(a) The claimant must establish—

(1) That property or natural resources have been injured or destroyed;

(2) That 25 per cent of the claimant's income, on an annual basis, is derived from activities which utilize, or are related to the utilization of, the injured or destroyed property or natural resources;

(3) That the claimant's income from these activities was reduced as a consequence of injury or destruction of the property or natural resources; and

(4) Whether or not substitute employment, or business, was available and undertaken and, if so, the amount of income received.

§ 136.211 Compensation allowed.

(a) Compensation is limited to the reduction or loss of earnings or profits suffered but is not allowed for lost employment or business when appropriate substitute employment or business was available but not undertaken.

(b) If substitute employment or business was undertaken, any resulting reduction in earnings or profits may be allowed.

INJURY TO, OR DESTRUCTION OF, NATURAL RESOURCES

§ 136.213 Authorized claimants.

(a) A claim for injury to, or destruction of, natural resources may be presented by—

(1) A Federal agency designated by the President, as trustee, for those natural resources over which the United States has sovereign rights or exercises exclusive management authority; or

(2) Any State, for natural resources within the boundary of the State be-

longing to, managed by, controlled by, or appertaining to the State.

§ 136.215 Proof.

- (a) A claimant must establish—
- (1) The identification and quantity of the natural resource for which compensation is claimed;
 - (2) The nature and extent of the injury to the natural resource;
 - (3) The cost to restore or replace the natural resource; and
 - (4) Any economic loss relating to the natural resource which would not be recovered by replacement or restoration.

§ 136.217 Compensation allowed.

- (a) The amount of compensation is based on—
- (1) The cost to restore, rehabilitate, or acquire the equivalent of the natural resource; and
 - (2) Any additional associated economic loss actually suffered.

LOSS OF USE OF NATURAL RESOURCES

§ 136.219 Authorized claimants.

- (a) A claim for loss of use of natural resources may be presented by any person who incurs economic loss as a result of not being able to directly use any natural resource.

§ 136.221 Proof.

- (a) A claimant must establish—
- (1) The identification of the natural resource for which compensation for loss of use is claimed;
 - (2) The activity which the loss of use of the natural resource prevented or affected;
 - (3) An explanation of how the use of the natural resource was affected;
 - (4) Alternatives to the activity and whether or not utilized, and if so, how, and with what result; and
 - (5) The economic loss suffered.

§ 136.223 Compensation allowed.

- (a) The amount of compensation allowed is the net economic loss incurred except that compensation is not allowed to the extent that reasonable alternatives to the affected activity were available but not utilized.

CLEANUP COSTS

§ 136.225 Authorized claimants.

- (a) A claim for cleanup costs may be presented by any person.

§ 136.227 Proof.

- (a) A claimant must establish—
- (1) The actions taken to prevent, minimize, or mitigate oil pollution;
 - (2) The costs and other economic loss incurred as a result of these actions; and
 - (3) Why the actions were taken.

§ 136.229 Compensation allowed.

- (a) The amount of compensation allowed is the total of reasonable costs and other economic loss incurred.
- (b) Except for action taken with respect to property owned, leased, or otherwise subject to the supervision, management, or use of the claimant, voluntary actions will not ordinarily be compensated.

LOSS OF TAX REVENUE DUE TO INJURY TO PROPERTY

§ 136.231 Authorized claimants.

- (a) A claim for loss of tax revenue may be presented on behalf of the United States, or any State or political subdivision thereof with authority to assess and collect taxes, by the official charged with the responsibility and authority for collecting these taxes.

§ 136.233 Proof.

- (a) A claimant must establish—
- (1) The identification and description of the tax for which compensation is claimed, including authority and regulations, property affected, method of assessment, rate, and method and dates of collection;
 - (2) That a consequence of the oil pollution was a reduction in tax revenue;
 - (3) The total tax assessment or tax revenue collected for the tax period before injury occurred; and
 - (4) The net loss of revenue.

§ 136.235 Compensation allowed.

- (a) The amount of compensation allowed is the total tax revenue actually lost during the one year period following the oil pollution incident.

Subpart D—Administrative Review of Claims

§ 136.301 General.

- (a) Administrative review of the denial of a claim is either by panel or administrative law judge in accordance with the Administrative Procedure Act (5 U.S.C. 554), section 307 of the Act, and these regulations.

§ 136.303 Initiation of Administrative review.

- (a) A claimant must initiate review of a claim by written notice, within 30 days of the denial of a claim, to the Fund Administrator, for forwarding to the Commandant.
- (b) Upon receipt of a request for review of a claim the Commandant refers the claim to an administrative law judge or recommends to the Secretary of Transportation that the claim be referred to a panel. If the Secretary does not refer the claim to a panel, the claim is returned to the Commandant for referral to an administrative law

judge. The Commandant notifies the claimant of the action taken.

- (c) The Fund Administrator may reconsider any claim at any time before a claim is referred to an administrative law judge or panel.

§ 136.305 Procedures.

- (a) The administrative law judge, or presiding officer of a panel, is responsible for all proceedings for review of a claim and, may—

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Adopt procedures for the submission of evidence;
- (4) Rule on offers of proof and receive evidence;
- (5) Dispose of procedural requests and similar matters; and
- (6) Convene, recess, reconvene, adjourn, and otherwise regulate the hearing.

- (b) An informal, preliminary conference is held, in advance of the hearing, presided over by the administrative law judge, or presiding officer, to narrow the issues and otherwise discuss the specific matters in dispute.

- (c) A verbatim record is made of the hearing. A transcript is not prepared unless either an appeal is taken or the administrative law judge, or presiding officer, specifically so orders. If a transcript is either required or desired for further review of the claim the moving party must order and pay for the original transcript for use by the reviewer. The parties are responsible for obtaining copies of the transcript for their own use.

- (d) The administrative law judge, or panel, promptly renders a decision following the close of the proceedings.

- (e) The decision of the administrative law judge, or panel, constitutes final agency action, unless, within 30 days of the decision, review under § 136.309 has been directed.

§ 136.307 Subpoenas.

- (a) The administrative law judge, or presiding officer, may issue subpoenas for the attendance and the giving of testimony by witnesses or for the production of any relevant evidence either upon motion by the administrative law judge, or presiding officer, or upon request of either the claimant or Fund.

- (b) Each subpoena bears the name "Offshore Oil Pollution Compensation Fund" and the name and address of the issuing administrative law judge or presiding officer and commands the person to whom it is directed to testify at a specified time and place or to produce at a specified time and place books, papers, documents, or any other evidence described in the subpoena with the particularity necessary to identify what is desired.

(c) Service of a subpoena shall be by personal service, or by certified mail with return receipt to be signed by the addressee only. Proof of service, or an explanation of the lack of service, shall consist of appropriate endorsement upon a copy of the subpoena, and shall be delivered to the administrative law judge, or presiding officer.

(d) The person to whom a subpoena is directed may apply to the administrative law judge, or presiding officer, in writing, to request that the subpoena be quashed or modified. The administrative law judge, or presiding officer, promptly considers and rules on the request. The request must be made at least five days before appearance is required or documents must be produced.

(e) Subpoenaed witnesses are entitled to the same fees and mileage allowance as witnesses subpoenaed by District Courts of the United States. These witness expenses are reimbursable by the Fund, to be paid by the Fund Administrator, if and when certified by the administrative law judge, or presiding officer, as costs necessary to settle claims against the fund.

(f) If the administrative law judge, or presiding officer, rules that good cause has been shown for seeking judicial enforcement of a subpoena, the ruling is referred to the United States District Court for enforcement.

§ 136.309 Review of administrative determination.

(a) Either the claimant or the Fund may petition the Secretary of Transportation, in the case of administrative review by panel, or the Commandant, in the case of administrative review by administrative law judge, for further review. Review is granted at the discretion of the Secretary or Commandant, as appropriate.

(b) A petition under paragraph (a) of this section must—

(1) Be in writing;

(2) Be made within 15 days of the decision of the administrative body; and

(3) Specify the issues in dispute and the basis for the appeal.

(c) Either the Secretary of Transportation, for a claim reviewed by a panel, or the Commandant, for a claim reviewed by an administrative law judge, may, on their own initiative, review the decision of the administrative body.

Effective date: These regulations are effective on March 17, 1979.

Dated: March 14, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

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